

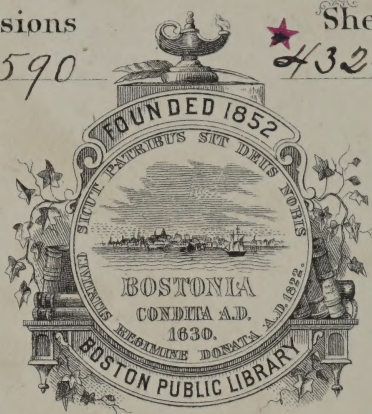


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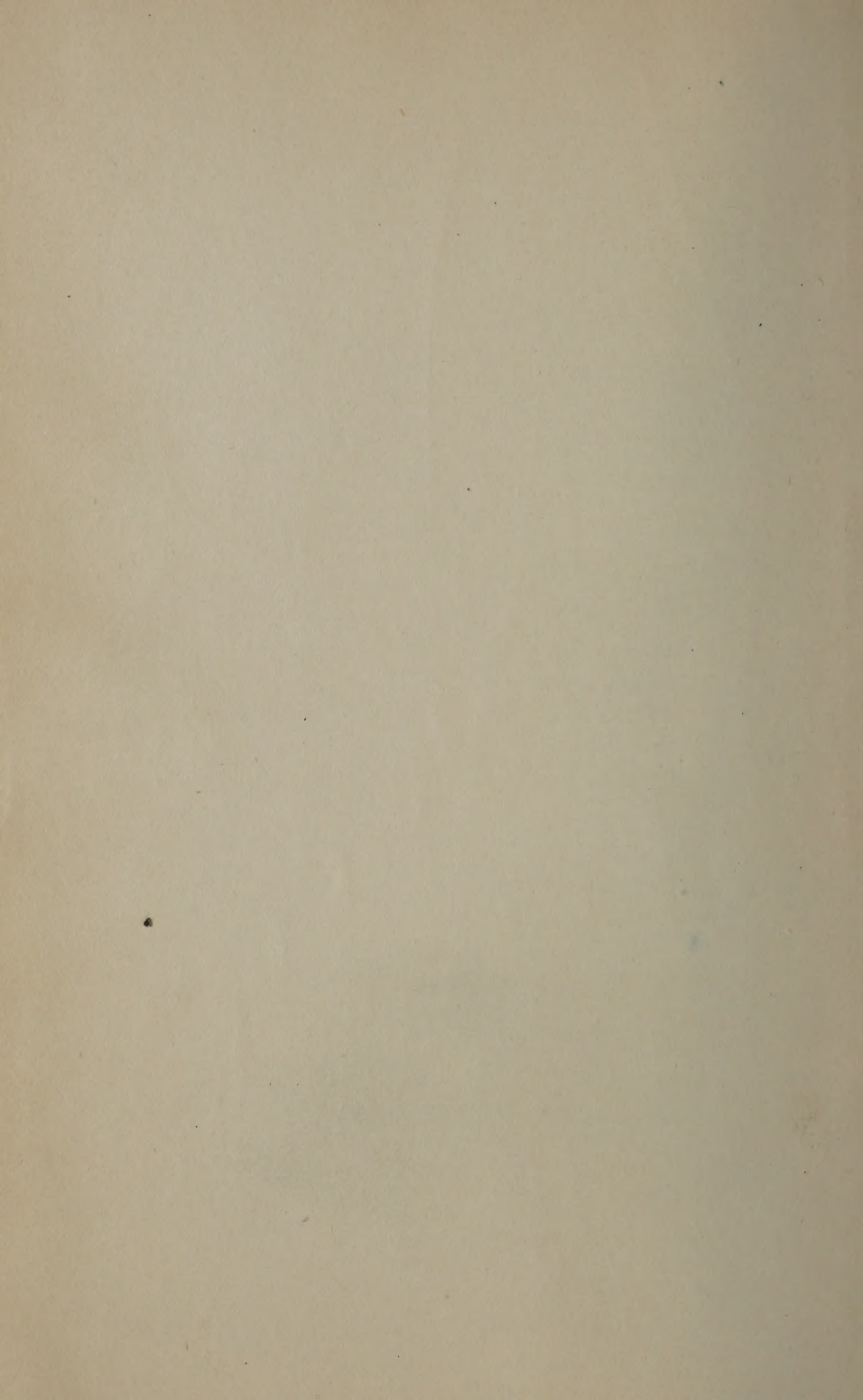


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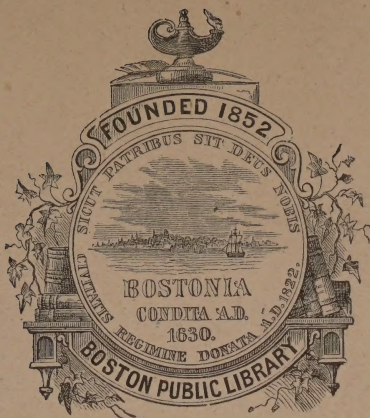












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# SHALL THE REPUBLIC BE DIVIDED?

## SPEECH

OF

HON. GLENNI W. SCOFIELD,

OF

PENNSYLVANIA.

WASHINGTON, D. C.

PRINTED BY WILLIAM H. MOORE.

1864



*1864 Mr. Scofield's Speech, Aug. 2, 1862*  
**SHALL THE REPUBLIC BE DIVIDED?**

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**S P E E C H**

OF

**HON. GLENNI W. SCOFIELD,**

OF

**P E N N S Y L V A N I A ,**

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DELIVERED IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 24, 1864.

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The House being in Committee of the Whole on the state of the Union, Mr. SCOFIELD said :

Mr. CHAIRMAN: My colleague [Mr. DAWSON] who addressed the House this morning, informed us that it was just eight years since he had spoken here before. I knew that, not because I have followed his personal history, but I knew it by the tenor of his speech. He must have turned down a leaf just eight years ago, and begun to-day where he left off then. The speech might have been appropriately made during the earlier years of the administration of General Pierce. I wish to remind him that the question involved in the struggle now furnishing so many sad pages for history is a question of division: "Shall the great Republic be divided into two small ones?" That is the question now before the country. Those who took the affirmative of this question, in the first place, took up arms with which to defend it. They knew they could not maintain it in debate. They knew they could never satisfy the American people that a Government always so tender of the interests of its poorest citizen, and so strong to defend him, could be as useful when divided into two nationalities not more than half as strong, territorially ill-shaped, and politically hostile. They did not try, but haughtily said to the country:

"Think of division as thou wilt,  
We try the question, hilt to hilt."

They gave but one reason for it. They said that some people—I believe they said a great many people—had spoken unkindly of their system of labor. That was all. I defy any gentleman to point out any other reason given by them for the position taken. But do not misunderstand me. I do not mean to say that so large a number of gentlemen, talented as we know, honest as we formerly thought, were moved to espouse disunion from a trivial mo-

tive. Their motive was as I have stated it to be. But, in my judgment, it was very far from being a trivial one. They wished to preserve that system of labor, why? Because they had \$2,000,000,000 in it. They had more than that, for I believe they were never distinguished as an avaricious people. Their aristocracy, family pride, political power, (a great item,) their habits of life <sup>and, ease, and</sup> idleness, all were in it. Of course they wanted to preserve it. They knew, however, that the institution was founded in wrong, and could not bear to be talked against. In a free forum it must go under. Allow me to use a figure. An iceberg breaking away from the pole and floating down into warmer latitudes gradually loses its frigidity, and dissolves in the warmer elements around it. So slavery, originating in the barbaric periods of the world, and floating down to this benignant age, was beginning to melt away in the warm breath of debate. To preserve slavery, therefore, debate must cease, or slavery be taken out of hearing—silence or secession seemed their only alternative. When silence could not be obtained they chose secession.

I know some other things were said. I know they said that the North would not turn out with constitutional alacrity to catch and return their fugitive bondmen; but these, like other similar complaints, were rather incidents of the main trouble than original causes of dissatisfaction. They were thrown out only to catch the minnows found in the great ocean of northern politics. The great leaders cared nothing for this small per centage of loss, smaller than in many other kinds of investment. They cared nothing for the few leaves that were here and there detached and lost in the ordinary breeze; it was the little streams of thought that were slowly washing the soil away from the root of the tree that alarmed them. Therefore, while we of the North talked about walling slavery in, lest freedom should be contaminated, they were considering how to wall freedom out, that slavery might remain pure. They decided upon disunion. They stated their purpose clearly, and took a name that indicated it honestly. They called themselves disunionists. They even pointed out the line where the surveyor should blaze the trees, and separate the free from the slave republic. They kindly gave to the twenty or thirty millions of unmixed white population the sterile hills of New England, the bleak shores of the lakes, and the head-streams and flatboat navigation of the Mississippi. The body of the Mississippi, with its stream of commercial wealth, unfailing as its own waters, the long Atlantic and Gulf coast, the vast country lying below Pennsylvania, Ohio, and Iowa, and stretching westward without limit, embracing the soft climate and warm soil of the South—all this, said they, we will take for the master and his slave.

Thus the issue was made up on the one side. There was no alternative left for the other. Those opposed to division were compelled—



you will remember how unwillingly—to take up arms, and submit the cause of the Union to the chances of battle. They organized under the appropriate name of the Union party. The old flag was hoisted, the long roll beaten, and the opponents of division everywhere called upon to “fall in.” Straightway, then, began some to make excuses. Says one, “I am opposed to division; but coercion is unconstitutional; I pray you have me excused.” James Buchanan said that in his last annual message. Says another: “I am opposed to division, and I think coercion is constitutional, but I believe it is impracticable. I think the United States is not strong enough to put down a rebellion so extensive, and led by men of so much ability, pride, and courage. I cannot, therefore, join you to try. I pray you have me excused.” Says a third: “I am opposed to division, and I believe that coercion is both constitutional and practicable; but there is an easier and better way; you can compromise. They only ask you to cease talking against slavery, and if you will not agree to do that, I, too, shall ask to be excused.” And so these three classes, each for a different reason, moved off by themselves, and formed the nucleus of what subsequently became a great party of neutrality, observation, and criticism. It was said the other day by the gentleman from Kentucky, [Mr. SMITH,] that there were but two parties in this country, patriots and traitors. I beg leave to differ from my friend. I think there are three, patriots, traitors, and neutrals. But I will not quarrel with him if he should say, as I think a high-spirited Kentuckian would, that he had more admiration for the mad courage of treason than for the mean cowardice of neutrality.

Let us pause here to answer the question sometimes yet asked, “Why did you not compromise? If they only wanted you to agree to cease talking about their system of labor, why did you not agree?” It was not lack of dough—we had, I am ashamed to acknowledge, dough enough to make a whole oven-full of compromises. It was not because the Unionists were not pliant, but because the disunion leaders were not fools. They knew that a contract for silence could never be enforced unless your republican Government was converted into an absolute monarchy. What is a republic, except the right to think and to express your thoughts by your voice and your vote? The Frenchman trades, travels, and seeks his pleasure as freely as an American. The Emperor takes no note of these. It is the free thought or the insurgent conscience that wears the imperial chain in France. These leaders knew that talk would go on in spite of contract, and therefore they did not ask and would not accept your worthless parchment. They had tried it. They had the Atherton gag and the Democratic and Whig resolutions of 1852 forbidding discussion, and the whole power of the Pierce and Buchanan Administrations to enforce their views. Former Administrations, although much devoted to the interests of slavery, found time to attend to some other matters. Polk, I think it was, explored



the "Dead Sea" of the Old World, and Fillmore sounded the depths of a deader sea at home for himself and his party; but Pierce and Buchanan devoted themselves entirely to this single purpose. They put on the master's collar and wore it as a thing of honor, and never seemed prouder than when they saw their southern friends spelling out the inscription, "This is Gurth, the bondman of Cedric the Saxon." These influences were ably aided by the press and around this Capitol. They were men that combined the opposite qualities of gentleness and severity, so fitting to a leader. They knew how to win the bold and overawe the timid. They were gentlemen among bullies and bullies among gentlemen. But with all these powers combined they could not close the mouth—will it please you any better if I say fanatical mouth?—of Wendell Phillips alone. And so they spurned your too pliant offer.

Three years have passed—years fraught as it seems to us at a distance, with great ruin to the South, with loss and heavy sorrow, as we know, to the North. How stand the three parties now? The disunion emblem is still upborne, less firmly than at first; and the area on which its hateful shadow falls is two-thirds less than in the beginning. Still it flies its signal word—"division." All the proclamations and messages of Davis, his governors and generals, all the laws and resolutions of his Congress and State Legislatures talk of nothing, ask for nothing but division. Will the gentleman from New York, [Mr. Wood,] who talks to us so much about peace, take notice that in all those official documents, if they can be called official, division is the only aim and end proposed?

How stands the Union party? Well, sir, our flag, I believe, is still floating, held more firmly than in the beginning, sustained by the courage—no, sir, that is not the word I mean, exactly; by the patriotism of the American people—and that is not the word I want to express my particular shade of meaning; it is upheld, I believe, by a stronger sentiment than courage or patriotism—by the sense of duty and stern conscience of the American people. And if you want to find which is strongest, pride and courage on the one hand, or conscience, and sense of duty on the other, read the history of the Cromwellian war, and you will learn that the proud Cavalier had to yield in the end to the conscientious Roundhead. And so it will be now. The motto of the Union party is the same as it was in the beginning. We unite the language of Jackson, “The Union—it must and shall be preserved,” and the language of Webster, “Liberty and Union, now and forever, one and inseparable.”

But where stands the neutral party; the party of "ifs," "ands," and excuses? Have you been here for three months now, occasionally presiding over this House, and do not know that there they stand—[pointing to the Democratic side of the Hall]—as they stood three years ago, occupying the same position of bloodless neutrality? They have not changed their ground, though they

give a different reason for holding it. They do not now say that coercion is unconstitutional. They do not now generally say that it is impossible, nor that anything you can give to the rebels by way of compromise will make their condition any better than it was before they rebelled. They generally concede that the rebellion must be suppressed by force of arms, or the Union be divided. But they say the President is always so unfortunate as to select unconstitutional means to effect what they now see, though they did not at first, is a constitutional purpose. And so they remain spectators; spectators in a war which involves the life of this nation and the fortunes of forty millions of people whose interests are associated with it. More than that: it involves the fortunes of the oppressed and middle classes all over the world; for ours is the world's representative Republic. But to do them justice, I must say they are not indifferent spectators. There they stand, glass in hand, or "nose all spectacle bestrid," looking anxiously for some fortunate mistake in council, or some cheering disaster in the field, which will fulfill their evil predictions and justify their position of neutrality before the world. Their music is a line of Yankee Doodle and a half line of Dixie, filled out with the "rub-a-dub-dub" of complaint and evil prophecy.

But, although neutral, they are not idle. They have a great deal to do. They have to see that this war is conducted with Christian tenderness on our part, though met with savage atrocity on the other. They have to see that treason-tainted, slave-earned wealth escapes confiscation, though it impose a heavier burden on the honest earnings of loyal men. They have to see that your credit is decried, and the taxes necessary to support it denounced, and then to complain to the country that "legal tenders" are not equal to gold. They have to see that a favorite general has an unlimited and untrammelled command, and that he is not held responsible for opportunities neglected or battles lost. They have to see that all possible, at least all constitutional objections are thrown in the way of the exercise of the elective franchise by the Union soldiers in the field, and that the freest elections are secured to the unpardoned secessionist in the rebel and border States. They have to see that practical amalgamation goes on undisturbed by any unconstitutional interference with the slave system of the South, while they falsely charge theoretical amalgamation on the virtuous people of the North. They have, too, to see that that portion of their followers who overestimate the abilities of the negro or underestimate their own, or perhaps have a proper appreciation of both, are held to party vassalage by constant dread of negro emulation. They have to see that their weaker brethren are educated into the belief that the negro is only fit for a slave and can never be anything else; and then to distress them with apprehensions that they may yet be compelled to compete with him in the industrial and professional pursuits of life, where brains, not color, will ascribe to each his just measure of success.



These are only specimens of the multitudinous labors of this neutral organization. If I were to go on with a full catalogue, I would exhaust your patience and my strength. I want, however, to call the attention of the committee to one thing more.

The main allegation against the President's policy is, that the war is conducted with a view of overthrowing slavery as well as the rebellion. If this allegation were true, what a position for a statesman to take; what a position for any man to take who expects to leave a name that will be remembered when he is gone, and a posterity condemned to bear it! It might do for James Buchanan—for God in his infinite mercy has provided that no child shall wear through life a name of such deep dishonor—but for nobody else. But, sir, it is not true in the sense in which it is alleged. It is not true that the war is carried on for the purpose of abolishing slavery. Those who believe it mistake an incident for the purpose of the war—the means employed for the end desired. You might as well say when we battered down Pulaski and Sumpter that that was the object of the war.

The President's great proclamation is urged in evidence of this allegation. The President saw that Great Britain was furnishing arms to the rebels. He invited that nation to desist, and accompanied his invitation with some promises and some threats. Great Britain desisted. The President saw that the slave was furnishing the rebels with food, clothing, labor, and fortifications; and he invited the slave to desist, accompanying that invitation with no threats, but with a single promise—the promise of freedom. That is all there is in the proclamation.

Mr. WADSWORTH. The gentleman states that the object of the proclamation of emancipation was to disturb the labor which supplied the rebels with food, &c. I know that the President has given *that* as the object of the proclamation; but I ask the gentleman if that can be so, in view of the fact which he recollects, that the proclamation itself advises the slaves to *remain quiet and continue to labor for wages?*

Mr. SCOFIELD. I do not now recollect the language of the proclamation, but I do not understand that he advised them to work for the rebels. The advice given was designed to avoid apprehended insurrections. The purpose of the President was to diminish the support furnished to the rebel cause by the slave. This purpose might have been strengthened in the honest heart of the President by some kinder sentiment than a cold military policy, and if so I will leave it to others to see that he is properly denounced. It is enough for me to know that it was a master-stroke of military strategy, which no general has to my knowledge as yet publicly condemned. As far as possible, the slave has since brought us not only his labor, but an army of one or two hundred



thousand men. Who now wants this promise recalled? If not recalled, who wants it violated in the future? Who wants the colored army disbanded and sent back to their rebel masters, and white men drafted in their stead? Will you of the neutral party dare to answer these questions in the affirmative? If you carry the next election, will you violate the President's promise to the slave? Will you say to the negro soldier, "Leave the battle-fields of our country, and seek again the cotton-fields of your rebel master. Your blood has stained, though not dishonored the one, the unpaid sweat of your brow shall hereafter moisten and enrich the other?"

Again, the President saw, or rather the people saw—for our cautious President, I am glad to say, does not attempt to do the people's thinking, and sometimes hardly keeps out of the way of the wheels of rapidly advancing popular sentiment—that every State redeemed from this unrepugnant system of labor was thus placed beyond confederate desire. Such a State was considered by the rebel builders unfit for an edifice whose corner-stone was slavery. They wanted no free State in their confederacy to preach anti-slavery by a prosperous example. They said this at Montgomery when they made their constitution, and have always said it since. We knew it was true, if they had not said it at all. If the border States become free they do not want them in the confederacy, while without them their territory becomes so insignificant that they do not want a confederacy.

The Administration, therefore, encouraged emancipation in the loyal slave States, as the best mode of bringing the war to a successful issue. Under that encouragement slavery has been abolished in the District of Columbia and three or four States. The neutrals have opposed and denounced this progress step by step. If intrusted with the power at the next election, they are pledged to undo all that has been so wisely done. They will re-establish slavery in the District of Columbia, and, so far as their influence will go, in all the border States. They must, to be consistent, reenact the slave code and rebuild the slave prison, and having got all things in readiness, they must call upon their party friends, and armed with lassoes and handcuffs, start out upon a grand hunt for the emancipated and scattered bondmen.

On the other hand, the Union party have resolved that, with the blessing of God, this country shall not only remain an undivided country, but, now that the necessities of the war and the humanity of the age require it, it shall become a free country. The shadow of your flag shall never grow less, nor shall it darken the life of the humblest man beneath it. The Union shall be restored, and the United States, the simple name that Washington gave us, shall be the name and indicate the character of this country for all time to come. And it shall be a name that the poor will love and the proud fear all over the world.







## SPEECH

OF

HON. GLENNI W. SCOFIELD,  
OF PENNSYLVANIA,

IN THE HOUSE OF REPRESENTATIVES, APRIL 28, 1866.

The House being in the Committee of the Whole on the state of the Union—

Mr. SCOFIELD said:

Mr. SPEAKER: What is the whole amount of disloyal population in the southern States? I do not include in this inquiry persons who have been stigmatized as "sympathizers" or "copperheads," much less any other portion of the Democratic party, but only those who sought to divide the country into two republics and who now regret the failure of their enterprise. The whole amount of white population in the eleven confederate States is 5,097,524. Deducting from this amount the estimated number of loyal people in those States, and adding the disloyal scattered through the other five slave States, will give the answer to my question. Making this deduction and addition from the most reliable data within my reach, I conclude that the disloyal population in the whole South will not exceed, if indeed it will equal, five million in all.

If the eleven confederate States were readmitted now (the Constitution and laws remaining unamended) what amount of representation in Congress and the Electoral College would this five million be entitled to claim? They would certainly have these eleven States. There could hardly be a doubt about Kentucky. For if the loyal men of that State, sustained by the power of the Federal Army and the persuasion of Federal patronage, with the young disunionists absent in the South and the old ones disfranchised at home, could scarcely hold their own, what could we expect them to do when these young men have returned, the disfranchising laws have been swept away, the Army removed or palsied by orders, and Federal patronage at least uncertain? This would give them twenty-four Senators. There are four more States that belonged to the slaveholding class, Delaware, Maryland, West Virginia, and Missouri. Is it any stretch of probabilities to suppose that two more Senators will be picked up somewhere in these four States by the confederate element? I fear there

will be more. This will give them twenty-six Senators.

In the House of Representatives this population will have as large, if not larger, proportionate representation. By the apportionment of 1861, fifty-eight Representatives were assigned to the eleven confederate States. These States will be so districted by the hostile sentiment of their several Legislatures that not one true Union man can be elected. To the other five slaveholding States twenty-six were assigned by the act of 1861. If any one will take the trouble to look over these districts, I think he will come to the conclusion that even if the laws disfranchising rebels in Maryland, West Virginia, and Missouri remain in force, not less than half of these will be controlled by the influence and votes of the late secessionists. This gives them seventy-one Representatives in the House. But even this large number must soon be increased. The two fifths of the four million freedmen which were not counted in the representative basis of the last census must be counted in the census of 1870, and (other things remaining the same) add to that number thirteen members more; so that the five million disloyal population, as soon as their full power can be felt through the elections, will have at least twenty-six Senators and eighty-four Representatives and one hundred and ten votes in the Electoral College. This is a low calculation. When we consider the earnestness, or rather I should say the fierceness of these people, the ability, ambition, and courage of their leaders, we may well apprehend that the number will be even greater. But this number is their own—legitimate and certain under the laws as they stand. Supposing the entire population of the United States to be thirty-five million now, this five million will be just one seventh the whole, but will have more than one third the representation in both Houses of Congress, and more than one third of the Electoral College. The same amount of loyal population at the North is represented by only about half that number. If by factions or party division among

the loyalists of the country, they could contrive to secure one sixth more of the representation, they would have a majority of the whole, and be able to control Federal legislation, elect the President, and distribute his patronage.

When these States are admitted and these people come to have the unabridged control of this twofold representation, how will they desire to use it. I do not inquire how they possibly may use it, nor even how they now expect or intend to use it, but how, if unrestrained by a united North, it would be their interest and desire to use it. For the perpetuation of the Union? I fear not. They have come back to the Union, we should remember, only by coercion. To them it is a forced bridal. They submit to it, but they do not, because they cannot, embrace it in their hearts. The soldiers maimed, wives widowed, and children orphaned in their bad cause, appeal to their leaders for the promised support, but the Union has no pensions for them. The fortunes invested in confederate faith see no hope of realization in the Union. Hatred of the North and its anti-slavery majorities, the original motive for secession, is ten times stronger now than in 1861, and is backed up by \$4,000,000,000 of debt, damages, and pensions, which, as they insist, could, in a separate government be levied by an export duty upon the cotton-consuming world. The life-habits of these people, their love of ease and domination, their pride, aristocracy, wealth, and power were all the outgrowth of an institution which might possibly be revived in a separate republic, but which is forever gone in the Union. "Confederacy" is a word that must long be enshrined in their hearts by the tender memories of their fallen kindred, but it must live as they well know in the history, traditions, and ballads of the Union, associated with perjury, dishonorable crime, and cruel war. If they should profess to love the Union we could not believe them. It is so unnatural that it would be easier to believe they were hypocrites than that they were monsters.

But they are neither hypocrites nor monsters. They do not love the Union, and do not pretend to. It is untruthful men of our own section that prevaricate for them. The same class of men that misrepresented the feelings of the North before the war, and thus deceived the South and goaded them into rebellion, now misrepresent the feelings of the South to deceive the North and lure it into irretrievable surrender. Before the war they deceived the South, and betrayed the North; but now it is reversed, they deceive the North and betray the loyal South, the same perfidious breath that carried South the untruthful story of northern hate, and thus prompted the war, comes back now with another story, equally untruthful, of southern love. They tell us that the disloyal South is a gentle bride, impatient for the nuptials, when they know that she submits to them with loathing. Have they not laid down their arms? is the argumentative inquiry. No, sir; their arms were taken from them. Have they not submitted? No, sir; they were defeated in battle. There is nothing in their past conduct

nor present attitude that justifies the use of the word submission. Prisoners of war have been taken, but they were released on parole; rebel armies have been dispersed, but they have been reorganized as State militia; rebel State governments have been overthrown, but again revived and restored to the old possessors; and forfeitures of life and estates have been remitted, but that is all. Call this clemency, privilege, triumph, victory, what you please, but do not call it submission, with which it has not one shade of meaning in common. We do not need to call witnesses to prove that these people are hostile to the Union and its interests. The history of the human race proves it. Whoever attempts to prove the contrary must first show that they are unlike any other people whose passions, struggles, and defeats are recorded in the annals of the world.

But witnesses have been called—Union generals and rebel generals, Union and rebel citizens, without distinction of party, condition, race, or color—and all support under oath the great historic truth, that a purpose imbibed in infancy, cherished and stimulated by the rostrum, press, and pulpit for a lifetime; upheld by large fortunes wrung from the toil of slaves, and sanctified by the blood of sons and kindred, has not been and cannot be surrendered to military orders. Such a purpose surrenders only to time. I do not present this great truth now by way of reproof or condemnation of these misguided people, but only by way of caution and warning to ourselves. I come to the conclusion, therefore, that they do not desire the perpetuation of the Union. If we would remove all restraints and give them freedom of choice they would revive the confederacy at once. They would take advantage of a war with Great Britain or France to secure their independence, and they would take advantage of their double representation here to promote such a war. If no opportunity of escape should soon offer, would they not still live in hopes of it and in persistent hostility to the country's obligations to the soldiers, widows, orphans, and creditors of our war, and friendly to the assumption of similar obligations created by themselves in the interest of the rebellion. Even in advance of their own coming, a portion of their vast claims have reached your files. When my colleague [Mr. RANDALL] from the Democratic side proposed that the national faith, pledged in war, should not be broken in peace, there was one voice from Kentucky against it—only one by count, but considering the quarter from which it came, multitudinous in omen. A bill has also been introduced by a gentleman, sometimes called the Democratic leader in this House, to repudiate in part the public debt under pretense of taxing it, in violation of the laws by which it was created. These cannot be regarded as the oddities of one or two men, but rather as impulsive confessions of imprudent scouts, too far in advance of the following army. The purpose will not be generally disclosed until the forces are arranged for its execution.

I am speaking now only of the dangers that



will beset the Republic by the allowance of a representation unfriendly to its prosperity and even its existence in such disproportionate numbers. But we should not forget that this act is also a recognition, as republican in form, of constitutions we have never seen, (except that of Tennessee,) and all, except those of Lincoln origin, under rebel supremacy. The white Unionists who have been looking through five dreary years of persecution, lynching, and confiscation to this as their hour of deliverance, will find themselves betrayed into the hands of their old, unhumiliated, unrelenting tormentors. It also consigns the freedmen to the tyranny of old masters, not now as heretofore bribed to humanity by a moneyed interest in the preservation of their chattel estates. Twenty-five per cent., says an honorable gentleman who presents his back offensively to the North as he makes his low obeisance South, twenty-five per cent. have already perished. The wish no doubt was father to the thought with the masters in whose interest the declaration is made.

These, then, are my premises. I will repeat them:

1. There are only about five million disloyal population in the country.

2. This population when fully restored to the Union—the Constitution, and laws remaining unamended—will hold more than one-third of its representative power and the supreme control of at least thirteen States.

3. They will be interested to use that power for the division of the Union; and, failing in that, for the repudiation of its military and financial obligations.

Now, what is to be done? If these States are denied representation, it violates the fundamental principle of republican government. If allowed a double and hostile representation, the Union itself must be destroyed or preserved at the expense of another war.

Three remedies are proposed:

1. Disfranchise some portion of the rebels.

2. Allow all the rebels to vote, but neutralize their disunion sentiments by enfranchising the blacks in these States.

3. Equalize representation by taking as its basis either the number of voters of the population, minus the disfranchised classes; so that these States shall have no more representation in proportion to their represented people than the old free States have.

Either proposition would require an amendment to the Constitution, to be accepted by the rebel States as a condition-precedent to their restoration. It is also proposed to couple with either proposition a second amendment, prohibiting the assumption of rebel debts and claims either by States or the United States.

The third proposition has commended itself to much the largest number of Union members, and the amendments to that effect have already passed this House by more than a two-thirds vote. This, then, so far as this House is concerned, is the congressional plan of reconstruction. All we ask of the rebel leaders who are

wrongly charging us with having no policy at all, but designing to exclude them for an indefinite period, is a little time to put in form of fundamental law these pledges of future peace. For five years they have been out upon plague-infected seas. Can they not tarry at quarantine for a single session?

Stripped of all disguises, herein lies the main disagreement. Shall these States be recognized at once in their present temper, without guarantees of any kind and with a twofold representation? It is not whether they shall be represented at all; to that we all agree. There may be a little question of time; a difference of a few weeks, or a few months, and that is all. Shall they be represented twice over, once in their own names and once in the name of the negroes? Shall they come in upon a representative basis that clothes a white man of the South with almost as much again political power as a northern man controls? That gives two white voters in South Carolina as much voice in the selection of a President and in the legislation of this House as five voters in Pennsylvania possess. That practically gives to one-seventh of your population, disloyal at that, more than one-third of your power. That, sir, is the great question before this House and the American public. It is an effort on the part of the Opposition to carry into the politics of the country the old problem by which sixteen is made the majority of forty-nine. In England, it is called the system of "rotten boroughs." It has long been the subject of political strife between the free and slave-labor counties of Maryland, Virginia, and Tennessee. And when it is everywhere else abandoned as a pernicious and anti-republican theory of representation, we are asked to make it the basis of reconstruction in the model Republic.

The enactment of these two simple and brief amendments, or others similar in purpose, is so absolutely necessary for the preservation of the Republic and the discharge of its obligations to its soldiers and creditors, and is so just and even generous to the insurgents, that they ought to receive the assent of every Union man, especially of every northern Union man. The Opposition do not dare to discuss their merits. While some deny that we have any plan of reconstruction, others assail it with insidious and deceptive objections. Some of these I propose to notice here.

First of all, they complain of the consumption of time. Five months have passed, and not a rebel admitted, is the complaining accusation. The Opposition are impatient. They cannot wait. Come in at once, say they, to the "erring brethren." Do not wait to drop your side-arms or exchange your disloyal garments. Bills to protect the loyal men of the South against your pretended violence are pending now, come and help defeat them. We will soon have bills to enlarge pensions and equalize bounties to the soldiers you have maimed and the widows you have made; your advice and votes will be needed. A bill to give bounty land to the "boys in blue" could not be defeated, nor the "butternuts" included without you. A bill to lift the burdens



of taxation from the industry of the country and place it upon your foreign confederates, through exported cotton, will need your attention. Hurry up your organizations. Do not wait to heal lips blistered with a double oath of broken fealty before you kiss the Holy Evangelists with another. We have buried our sons and are languishing to clasp the hands of their murderers. When once admitted, deny that you ever tried to break up the Government, but swear on all occasions that the Lincoln party were and are the traitors.

The complainants have only themselves to blame for much of this delay. Except for their persistent opposition the amendments would have been submitted months ago to the Legislatures then in session in the loyal States, and been assented to, no doubt, by the constitutional number. Except for their own opposition they might now be welcoming back their long mourned friends to seats in these Halls. But they would consent to nothing that did not return them greater in numbers, and more malevolent in purpose. Hence the delay. *Hinc illa lachrymæ.*

Next we are told that it conflicts with the "President's policy." What is the President's policy? I aver, first, that the President when last authoritatively heard from, was in favor of the principle embodied in each of the proposed amendments. Of the first one, because he required the confederate States to adopt it; of the second one, because he has repeatedly declared himself in favor of making the number of voters the basis of representation. I aver, second, that he does not consider the *status* of the States such, that their assent to constitutional amendments cannot be required as conditions-*precedent* to their restoration, because he directed Mr. Seward to inform these States that their assent to the amendment proposed in the last Congress was "indispensable" to restoration; and because he has not himself dealt with them as if they were States already in the Union. When the confederacy fell they were in full operation under governments originally organized in the Union. Governors, Legislatures, judges, and a full set of county and township officers were at work under constitutions once declared to be republican in form by the United States. These governments were regular unless you assent to the doctrine of forfeiture, for they had political continuity, what the church people call apostolic succession. Yet they were destroyed by the President's order and new ones extemporized in their stead.

From that time to this, in these States, the breath of the President has been the law of the land. Mr. Johnson went much further in this direction than his predecessor. Mr. Lincoln established governments only in States where he found none existing before, but Mr. Johnson first destroyed existing governments and then supplied their places with those of his own creation. So, both by words, and actions which speak louder than words, the President assents to every principle involved in the congressional policy of reconstruction. Indeed, the two poli-

cies could not well conflict, because they relate to different subjects. The one creates or revives State organizations, the other renews their Federal relations. When these organizations were complete, and the States ready to apply to Congress for a return to the Union, the President's policy was ended. His work was all done. The rest was for Congress. So he directed his Secretary of State to inform Governor Sharkey, July 24, 1865, Governor Marvin, September 12, 1865, and so he informed us in his annual message. If he has changed his policy since then it is hardly worth while to inquire what it is now, for his principles are written in water.

I do not wish to disguise the fact that while he approves the two amendments and believes the power exists to require their adoption as conditions of return, he thinks it unnecessary to insist upon any terms additional to those imposed by himself. It is in this opinion that his old persecutors, the defeated enemies of the Union, the foiled plotters of his assassination, have taken heart, and with cruel malice conspired with northern sympathizers to pursue him with their unrelenting friendship. Their last hope for the destruction of this country lies in the seduction of its friends. War failed them, they resort to diplomacy. The President was not much moved by their threats, will he be seduced by their flattery? If so, let me assure those of our friends who are disposed to suppress their own convictions in hope to detain him and his patronage in a little select court party, that they might as well exercise a reasonable liberty of opinion. For if he ever determines to trust his political future to anybody besides the great, earnest, triumphant Union organization that elected him, he will have sense enough to put them aside as mere nobodies in popular strength, heartless friends and harmless enemies, as courtiers always are, and push straight for the "southern brotherhood," rebelled opponents of a permanent and peaceful Union.

In that event his children and friends may well rejoice that the past, at least, is secure. His patriotic thoughts of the last five years will still live, although only to reprove him.

Again, it is said by way of excuse, "Why not admit such Union men as Fowler, Stokes, and Maynard, of Tennessee?" Because it is not a question about men. Shall a disloyal district, while it is still in a disloyal spirit, be declared entitled to representation with only half as many people in it as we require for a district in the North? That is the question. Captain Semmes ran up the Union flag when he wished to decoy an unarmed merchant vessel under the power of his guns, but replaced it with the pirate emblem when he had secured his victim. The names of these patriots are hung out to-day to secure representation to a rebel constituency behind them, but they will be hauled down at the first election and rebelpup in their stead. You may think you are only recognizing the Union flag, but when it is too late you will find yourselves alongside the Alabama and in the power of its pirate crew.

But it is said in reply, "We will not admit

disloyal men, even if elected." How can you help yourselves? If a whole delegation from South Carolina, for instance, present themselves to the Clerk of the last House, and ask to be placed on the roll prior to organization, and tender him the certificate of their election, signed by the Governor and sealed with the great seal of that most sovereign State, shall the Clerk say which is loyal and which not? I suppose not. After the organization, in which all have participated, and all have been qualified and taken their seats, you will get up an inquisitorial committee to explore the secret recesses of their consciences and be father confessors to their sins. "No, but the iron-clad oath will exclude them." Do you not know, sir, that almost every man who is in favor of admitting these States without conditions is also in favor of repealing that oath? They already denounce it as an odious and unconstitutional test. The Secretary of the Treasury and the Postmaster General, backed up by a message from the President, ask its repeal so far as regards their Departments, thus making rebels as eligible as Union soldiers to appointments here, and under such lead I expect to see it swept away, and so do most of the gentlemen who are now urging us to lay aside a real safeguard and trust to this cobweb of a morning.

But suppose we could in this way contrive to dictate to these people who they should and who they should not elect, what kind of representation would that be? We say to them "You are free to select your representatives, but mind that you select such as suit us, not yourselves." You call that representation. I call it obedience. We propose to extract the envenomed fang of the serpent before he is uncaged; and you to to bind him with test oaths afterward. Suppose, again, you could manage to exclude in this way those who had been engaged in the rebellion, do you not know that a rebel constituency could find a fit representation outside that list, and all the more dangerous on that account? If they had none at home they could colonize from the North.

Again, magnanimity is invoked as a shield of desertion. A great nation, it is said, can afford to be magnanimous. Of course it can; but let us see how this is. For four years these people made war upon us without cause or even plausible excuse. Before they began it, we begged them in great humility to withhold from the country this terrible desolation. In tears we warned them of the punishment that must follow. Our entreaties and warnings were received in the rebel capital, so their telegraph informed us, "with peals of laughter." They fired upon us while we were yet upon our knees begging for peace and union. The contest once begun was conducted on our part with great forbearance and within the strictest military law. We even returned for awhile their fugitive slaves. On their part it was conducted not only with the condemned system of cruel guerrilla and piratical warfare, but with fire, poison, yellow fever, and assassination. The estates of Union men within their power were confiscated, and have

never yet been restored, and Union men were hung for treason to their pretended government.

You tell us they have suffered. So have we. Peace has come at last; business prosperity will return; the insignia of mourning will be laid aside; but in the heart of every family there is an unspoken sorrow that will sadden life even to the grave. Now, we are admonished to be magnanimous to the authors of all this suffering. I accept the admonition, but I submit that we are so already. The law condemned them to death, and we have pardoned them. Their estates were forfeited, and we have restored them. Not a traitor has been hung; not one convicted; not one tried; not a dozen arrested; but many have been honored as rulers in States they only failed to ruin. The high-sounding eloquence of the gentleman from New York, [Mr. RAYMOND,] calling upon us to admire the "courage and devotion" with which these bad men prosecuted a cruel war against our kindred, our home, and our country for four years, has scarcely subsided, when our tears are invoked over their self-inflicted sufferings. Thus at this end of the avenue we are alternately called upon to admire and pity them, while at the other the green seal is kept hot with its work of clemency—clemency often unsolicited, sometimes condemned. We have even ordered historic inscriptions to be erased from captured cannon at West Point, that the boys educated at the expense of a Government their fathers could not quite destroy might not be irritated. What more can we do? What more can gentleman ask in the name of magnanimity? "Give to this one-seventh of your population more than one-third of your political power." Is that what you ask, and call it only magnanimity to the false men of the country? Call it rather treachery to the faithful; or if that sounds too harsh, call it submission, surrender, what you like—but for the sake of truth let no one call betrayal of country and friends magnanimity to enemies.

Again, sir, the effort to cut off the excess of this unpatriotic and sectional representation is ascribed to party motives. Is not the Opposition exposed to the same charge? Is not the Democratic party as anxious to secure friends as we are to avoid enemies? For the last five years they have been beaten everywhere. Every election has proved to them that they were growing small by large degrees. "Would to God that night or the rebels would come" has been their daily prayer. Does this haste to embrace the misguided brethren come solely from pure love and affection? Is it not possible that their passion is somewhat like that of—

"The immortal Captain Wottle,  
Who was all for love, and a little for the bottle."

Is it not possible that they look a little to party too? That they long not only for the alliance, but the leadership of the South? They must remember that this leadership was generally able and always consistent, however unwise. It was not under that lead that they proclaimed both secession and coercion unconstitutional; that



the war for the Union was constitutional, but there was no constitutional mode of conducting it; that an army should be raised, but volunteering was impracticable and drafting unconstitutional; that it was right to raise money, but wrong to tax or borrow; that they were opposed to emancipation, but not in favor of slavery. It was not under that lead that Andrew Johnson was denounced as Lincoln's satrap when he consented to be provisional governor for a State from which the old governor and legislature had run away, and cheered as a patriot when he drove out the governors and legislatures of half a dozen States, and supplied their places with appointees of his own. Is it not probable that, tired of their contradictory and hypocritical position, they crave the undissembling leadership of Breckinridge and Hunter, Davis and Toombs, as much as we can possibly dread it?

As another excuse for opposition to this plan of restoration it is said there are other inequalities in representation that ought to be removed as well as this. An honorable gentleman from Pennsylvania complains that the six eastern States have each two Senators, while New York and other large States have no more. It is true that some of the eastern States are small; but the Constitution provides that each State, whether large or small, shall have two Senators; and it further provides that while that instrument may be amended in other respects, with the assent of three fourths of the States, in this respect it shall not be amended without the assent of all the States. But why point only to the eastern States to illustrate the inequality of senatorial representation? The best illustration of it is not to be found there. The population of these States is 3,135,223. In the South you can find a smaller population with a larger representation in the Senate. The population of Arkansas, Texas, Florida, South Carolina, West Virginia, Maryland, and Delaware is only 3,032,761. Here are seven States with more than 100,000 less population than the six eastern States, one third of that being negroes, with fourteen Senators, two more than New England. Why did not the gentleman make his point on these States? Was it because the eastern States are free and loyal, and the others were slaveholding and in part disloyal? And why, just in this connection, does he complain that bounties are paid for catching fish? He never complained when higher bounties were paid for catching men and women for the southern market. These are the old complaints of the South, warmed over, in anticipation of its return; groundless, no doubt, but if ever so just, furnishing no good excuse for allowing to the complainants a twofold representation in this House.

Once more we are reminded that taxation and representation should go together. True, sir, but that would not entitle them to a double representation, nor deprive Congress of a reasonable time for deliberation as to the extent of the right and the best mode of securing it. But if it is meant that they are entitled on the score of taxation to instantaneous, unconditional, and

disproportionate representation, I must beg leave to inquire, where are the immense taxes paid by them, upon which to base such extraordinary claims? The loyal people of the country have been paying burdensome taxes, a million per day, imposed by their misconduct, but when and where have they paid taxes? For the last five years they have paid none, and the amount they are just now beginning to pay is too trifling for argument. If the right of representation could be acquired by imposing taxes upon others or by robbery of the Government, their claim would be indisputable. They robbed the southern post offices of money, stamps, and mails; the arsenals and military and naval depots of ammunition, arms, and clothing; the custom-houses and sub-Treasuries of goods, bonds, and money; and the New Orleans mint of \$600,000 in gold, and have never made restitution. But they have paid very few taxes, and long before they will be called upon to do so a fair and adequate representation will be accorded them.

But they have still another argument—the one relied upon when all others fail, their refuge from discomfiture in every other field of debate—and this is what they call the constitutional argument. When they find themselves unable to maintain in discussion the propriety of allowing the disloyal population a twofold representation, the half to represent themselves and the other half to misrepresent the loyal people, white and black, in their midst; when they can no longer screen themselves behind the "President's policy," words of indefinite meaning; when their aspersion upon our motives is repelled by showing that they have as strong party interests in forming an alliance with the rebels as we possibly can have in trying to prevent it; when their taxation theory is demolished by a report from the Secretary of the Treasury, they fall back upon the constitutional right of States to representation. They will retreat no further. This is their last ditch in debate. And here,

"In Dixie's land  
They take their stand,  
To live or die for Dixie."

Mr. Speaker, we are in an anomalous condition. The Constitution does not especially provide for the difficulties with which we are surrounded. Our fathers could not believe that so large a portion of the American people could be so barbarized by slavery as to undertake such stupendous crime. They did not provide for what they could not foresee. There are no precedents on file to guide us. This is the first disunion rebellion. Ours will be the first precedent in reconstruction, and the last—only if it is justly and wisely made. There are objections, plausible or otherwise, to every theory that has been or can be advanced as to the status of these States. My colleague [Mr. STEVENS] suggested that their present position was very much like that of California after the Mexican war. A score or more of speeches have been made to show that there are objections to this theory. The gentleman from Ohio [Mr. SHELLABARGER] suggested that these State governments had



perished in the rebellion, and that now new ones, republican in form, should be originated by Congress. Objections were raised to this theory. The gentleman from New York [Mr. RAYMOND] suggested that new governments must be originated and proper guarantees and conditions could be imposed, but these things should be done by the Commander-in-Chief of the Army and Navy as the terms of surrender. Objections have been raised to that theory also. Others still take the position that inasmuch as new constitutions and new governments have been established in these States originating in an irregular or revolutionary manner, that it is the duty of Congress, under the fourth article and fourth section of the Constitution, to see that they are republican in form, and in the discharge of that duty, require such conditions or guarantees as the safety of the Union, in their judgment, demands. This, too, is objected to.

An honorable gentleman from Pennsylvania at the other end of the Capitol, with some self-conceit, as it seems to me, sets down all these reconstruction suggestions or theories as mere whimsies. He has a plan of his own to restore the Union and get rid of traitors. It is simple in theory and cheap in execution. He will execute it himself with only the aid of a constable. Whenever a rebel shows his head, he and his constable will pounce upon him like a Buchanan marshal on a flying negro. He will put him where no rebel ever went before with his consent—in the old Capitol Prison. If the honorable gentleman really thinks that his plan is practicable, why does he not set about its execution? His intended victims swarm through the Capitol and the White House, and two or three dozen of them are asking admission to Congress. There are objections to this theory. Indeed it has been tried. It was Buchanan's plan for suppressing the rebellion, but it failed.

Now, sir, the theory of the Opposition, based upon the second and third sections of the first article of the Constitution, under which members from the rebel States are to be admitted to these Halls without our leave, is that the right of a State to representation cannot be forfeited or lost so long as these two sections remain unaltered. Is there no objection to this theory? Why, it concedes the right of representation during the whole war. Their members could have entered this Capitol at any time and voted as the interest of the confederacy required. If the war had lasted fifty years instead of four, the right would have run through all that time. Nor would it have ceased if our armies had been overpowered and the confederacy left unmoles- ted. After one hundred years of separation, they might still vote for President and send members to Congress. Unless you admit the doctrine of forfeiture, you cannot avoid this conclusion. Aside from this doctrine, nothing but an amendment to the Constitution could deprive them of this right. But the Constitution could not be amended, because these eleven States are more than one fourth of the whole, and the assent of some of them would be necessary for

any amendment; and to deprive them of Senators the assent of every one would be necessary.

The advocates of this theory, to avoid the result, concede that the right of representation would be forfeited by success. But how? The Constitution is not changed by the result of a battle. There it is, just as it was before. If they lost nothing by defeat would they by success? They lost nothing by secession and unsuccessful war, you say, because these were unconstitutional. Can they lose anything, then, by victory? Would not that be unconstitutional also? "But we would acquiesce." Well, suppose we should; would not acquiescence be unconstitutional and void? Where in the Constitution are we authorized to acquiesce in a division of the Republic? If their ordinance of secession was void would not our consent to it be equally void? If the ordinance was void can it be rendered more so by defeat, or less so by victory? Some of the advocates of this theory, to avoid this reasoning, concede that the right of representation is forfeited or suspended during "contumacy." This cruel word to characterize the great rebellion is not original with me. It is the word maliciously chosen by our conservative friends who are determined to make treason odious. I wish the printer to inclose it with inverted commas, that such severity of language may not be ascribed to me. But who is to decide when the suspension begins and when it ends? The State? If so, that is no suspension at all. A right that can be taken up and laid down at pleasure cannot be said to be suspended. Is Congress the judge? Then I submit that by secession from the United States, by the formation of a new confederacy, by four years of terrible war and five of scornful refusal, these States would become a little contumacious, and Congress would be justified in suspending their rights until the legislation necessary to make representation fair and equal could be agreed upon and passed. And that is all that anybody here proposes to do.

This appeal to the Constitution for authority to hand the Government over to the unrepentant plotters of its destruction, is but a continuation of the policy pursued by the Opposition for the last five years. During that period they have raised a cry about the Constitution many times, but always in opposition to good measures or in advocacy of bad ones. When it was first proposed to coerce the rebellion and save the Union, and at every following step toward apparent success, they cried, "unconstitutional." It was unconstitutional to raise an army or march it into the sacred soil of the South. It was unconstitutional to issue bills of credit to meet the expenses. It was unconstitutional to close a rebel port or arrest a rebel spy, to proclaim martial law in a rebel country, or to appoint a provisional governor for conquered Louisiana or abandoned Tennessee. Look back through the debates of the Opposition; there is nothing constitutional but slavery and rebellion; nothing so unconstitutional as coercion and emancipation. Judging from these debates, the Constitution was

especially framed to repress liberty, punish fidelity to the Union, shield oppression, and honor treachery and great crime. These war measures are all constitutional now. Great light is thrown upon the Constitution by the surrender of Lee. The gleam of successful bayonets illumines the dark understanding of pro-slavery quibblers. But alas! the light of success shines only on the past. All the future is still unconstitutional. The "unconstitutional, disunion, abolition war" is rendered constitutional by the victory of our soldiers, but the effort to secure to the country the fruits of that victory by appropriate legislation is as unconstitutional as ever.

Here I close my defense of the Republican policy of restoration. Shall that policy be adopted? Not by this Congress, it is said, because enough conservative Republicans will unite with the Opposition to defeat it. Then, by falsely charging upon the Union party non-action and lack of purpose, it is hoped that a Congress can be elected next fall which will repeal the test oath and admit the rebel States without guarantees or conditions of any kind, and with a representation always excessive and now enlarged by emancipation. Without the enlargement (which will not be attained until after the next census) the eleven confederate States will have eighty votes in the Electoral College, controlled entirely by the late insurgents, namely:

Alabama.....	8
Mississippi.....	7
Arkansas.....	5
Texas.....	6
Louisiana.....	7
Florida.....	3
Georgia.....	9
North Carolina.....	9
South Carolina.....	6
Virginia.....	10
Tennessee.....	10

They will need seventy-seven more to elect a President: Kentucky, Missouri, Maryland, and Delaware, States with strong confederate proclivities, will, it is claimed, furnish thirty-one,

while the other forty-six can be made up by the Democrats of New Jersey, New York, and Connecticut. The classification of votes by which the President would thus be elected, would stand—confederates 80, semi-confederates 31, Democratic 46. This presidential scheme will undoubtedly fail, and yet it is the only one that has the slightest chance of success. If the Union party can be beaten at all, it must be by this or some similar combination. Suppose it successful, then, what would be the character of the new Administration? Four members of the Cabinet would belong to the eighty-confederate votes and the other three to the seventy-seven from the northern and border States. All presidential appointments at home and abroad must be made on the same line of division.

If, as is alleged, this combination could also carry a majority of Congress, the confederates would have a majority of that majority, and in caucus (giving their allies the Clerk) would demand the Speaker and a majority of all committees, such as the Ways and Means, Claims, and Pensions, to which their peculiar interests might be referred. Pensions must then be surrendered or divided with confederate claimants; service in the Union army would be an impediment to political success, and the Treasury, supplied by the industry and economy of the North, would be steadily absorbed in confederate damages. Then your creditors might count their worthless bonds, and learn exactly how much it cost them to reclaim their fugitive masters. Then the pensionless widows and orphans of our valiant dead bemoan in poverty and neglect the ingratitude of a Republic saved by a husband's and father's blood. And then our surviving soldiers must conceal their honorable scars to save a humble position in the capital they helped to preserve—for the enemy. Then, sir, we will all see, feel, and realize what the Opposition, in different phraseology, constantly assert, that the object of the war was to force the rebels to become our rulers.

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Chronicle print.







# RECONSTRUCTION.

## SPEECHES

OF

HON. S. W. SCOFIELD, OF PENN.,

AND

HON. JOHN A. BINGHAM, OF OHIO,

*Delivered in the United States House of Representatives, January 20th, 1868.*

On the bill (H. R. No. 439) additional and supplementary to an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867.

Mr. SCOFIELD rose and said:

Why is it, Mr. Speaker, that all reconstruction legislation is regarded by one side of this House as unconstitutional, revolutionary, and despotic, while the other side, more numerous, not less honest, not less patriotic, not less learned in the principles of the Constitution, not less devoted to human liberty nor opposed to every form of human oppression, look upon the same legislation as constitutional, appropriate, and necessary? I impugn the motives of neither side, but I ask for a solution of this disagreement. I suppose it is because the two sides of the House look at the subject from different standpoints. One side holds that the confederate States are now, and all the time have been, constructed and ready for admission; while the other side hold that the regular constitutional State governments were destroyed by the war, and that new ones must be originated by somebody to take their place before they can elect Senators and Representatives to Congress. From these standpoints the view of either side is correct. It was somewhat so during the war. One party started out with the theory that it was unconstitutional to coerce a sovereign State into submission to the General Government, and of course from this stand-point all war measures were unconstitutional; while the other party, holding that coercion was constitutional, approved of all measures calculated to accomplish that result.

The difference between us on the question of reconstruction is mainly a question of fact. If it be true that the confederate States have now legal and constitutional governments all reconstruction is, as is claimed, unconstitutional, revolutionary, and despotic; but if they have no such governments it must be admitted that reconstruction of some kind is an absolute necessity. If South Carolina, for instance, has now or has had since 1861 a legal State government, I will thank some gentleman on the other side to tell me what it is. Is it the old government that existed prior to the war? I admit that this constitution is printed in a book and laid away in the libraries of the country, but I deny that it has any existence outside of books. If it has any other existence, where is it? It has no Governor, no Legislature, no judge. There is not a single gentleman within the limits of the State who professes allegiance to it, and no one inquires what it prohibits or what it commands. It is like the unsepulchered skull—

"Sans teeth, sans eyes, sans taste, sans everything."  
I know the gentleman from Indiana [Mr. KERR] claimed the other day that the State government might be revived. Indeed I think he said it had been revived. But that would involve the exercise of all the power that anybody claims in the legislation which we are now enacting. To reconstruct and to revive a government that is dead means the same thing.

Is it the confederate State government that exists in South Carolina? It did exist there, when Congress adjourned in March, 1865; but when we assembled in December, 1865,

it had disappeared. Mr. Johnson and his Secretary of State had gone down there and disposed of it. They had scuttled the hull and sent the confederate ship, with all its reasonable machinery, to the bottom, leaving to the country nothing but the hateful memory of its crimes.

But Mr. Johnson and Mr. Seward have set up some governments in the late confederate States, and it is said that Congress should recognize them. Why? Because they have been accepted by the people there? No, sir; they were not submitted to the people in any State except North Carolina, and in that State a majority voted against it. And in the election of delegates to the conventions only about one-third of the white voters participated at all, and a portion of those gave their votes against the whole scheme. Of course the blacks were excluded altogether. Shall we accept them because they are republican in form? No, sir. A large portion of the people, in two of the States, at least more than half, are excluded from all participation in them. Shall we accept them because they secure to those States only a fair proportion of Federal representation? No, sir; the represented people in South Carolina and Mississippi secure a little more than twice as many votes in this House and in the Electoral College as are given to the same number of represented people in Pennsylvania or any northern State. Are we bound to accept them because they had a lawful origin? What article of the Constitution or what law of Congress authorizes the President and his Secretary to start in the business of making State governments or to coerce and cajole a handful of the people to co-operate with them in such an undertaking? Do you not recollect, Mr. Speaker, that in the summer of 1865, while Mr. Johnson and Seward were still reconstructing, our political opponents applied to their work the same three ugly words that they now apply to our plan—"unconstitutional, revolutionary, and despotic?" Before they discovered how bad these governments would be, they taught us the principles upon which they ought to be rejected. We were bound, then, by no principle of law, equality, or justice to accept these anti-republican productions of the President, and Congress rejected them by a majority of nearly three-fourths. The question was submitted to the people at the elections in the fall of 1866, and after four months' debate they indorsed the action of Congress by an emphatic vote. Inasmuch, then, as these governments were illegal in their origin, (our opponents themselves being judges;) inasmuch as they were never sanctioned by any considerable portion of the people, white or black, in those

States; inasmuch as they secure to a disloyal population nearly double as much power in the Federal Government as the same amount of loyal population in other States possess, and inasmuch as they were rejected by nearly three-fourths of Congress, and that action indorsed by the people, I come to the conclusion that they are not governments which any man is bound by law or justice to respect.

But the gentleman from New York [Mr. Brooks] thinks the decision of the people in 1866 is not conclusive. He infers from the elections of 1867 that public sentiment is changing, and that in 1868 a President and Congress will be chosen whose political opinions will coincide with his own. He is kind enough to inform us what will then be done. "The enactments of the last six years," says he, "shall be repealed." Humanity, justice, and equality shall be dethroned, and the old slave power, unchristian, intolerant, insolent, and cruel, shall reign in their stead. Suppose your dreams were realized; suppose the people in an evil hour had put you in possession of all the departments of the Government; suppose the gentlemen who during the last six years have wrought such terrible ruin in the South and brought such deep sorrow to the North and all the land were here to aid or lead your efforts; suppose the servile code restored, fugitive slave law and all; suppose the demolished slave prisons rebuilt, the rusty manacles reburnished, and the overseers engaged, how will the gentleman secure his victims? His legislative work will then be accomplished; his services will no longer be needed here. Imagine the gentleman then leaving his place and going home to ask his Christian constituents, learned through his instructions in the mysteries and measurement of shins and heels, to arm themselves with lassoes and handcuffs and follow him in one grand hunt for emancipated bondmen. The gentleman and his party, in great patience and meekness, have long labored for the disloyal masters; but when this heavy task shall be imposed upon them it will be one hair too much even for their uncomplaining backs. This utterance of unattainable hopes brought to the gentleman's seat many admiring friends. I could not hear the congratulations, but I can well imagine they were much like Falstaff's address to his prince: "Thou wilt have no back seats for traitors and no free niggers in America when thou art king; wilt thou, Hal?"

Having shown that there are not now, and have not been since the close of the war, any legal constitutional governments in these States, I proceed to enquire who should originate new ones. If I correctly understand



gentlemen on the other side they claim that new governments ought to originate with the people of the States. Very well, sir; how long shall we wait for those people to move? It is more than two years since the war closed, and no unprompted movement in that direction has been made by them to this hour. Oh no; I mistake. They did elect a convention in Louisiana, and it will be recollected that there was great joy among the anti-progressives and back-going politicians when it was known that the delegates were mobbed and murdered, the convention dispersed, and the popular movement crushed out. Suppose the people of South Carolina, for instance, would undertake to construct a government. The disloyal people might originate one, the blacks another, and the loyal white men another. Congress must determine at last which is the real government of the State, and this determination involves the exercise of the same power necessary to the passage of our reconstruction acts. But, as I said before, the people have not moved in this matter at all. There is, therefore, no alternative. Congress must call upon and authorize the people to reconstruct their governments or leave them either under military rule or rebel anarchy forever. On the 2d of March last Congress passed an act for this purpose. And what was it? Simply this: it authorized a major-general in the Army to make a list of all the legal voters in a particular State, and call upon them to assemble on a day fixed and elect delegates of their own free choice to a convention which should frame and submit to them a form of State government. That, sir, was our reconstruction, and that was all of it. That is what is now pronounced unconstitutional, revolutionary, and despotic. I forgot, sir; that is not quite all. It authorized the officer, in the absence of governments, and in the midst of vindictive and lawless men, to preserve the peace until the new governments should come in power. Our opponents have found a few things to be mad at even in this simple formula. They charge that we omitted from the list of voters a large number of persons, simply because they waged a long and bloody war against a Government not only the best, but most lenient and munificent in the world. I deny it. Not one man was left off the list for this cause alone; and only a small number was left off for any cause. Those who committed treason, and in order to commit this crime first committed perjury, were left off, and no others. The number was comparatively small. The number of white voters now registered under this law is only 76,000 less than all the votes in these States in 1860, and is just about

double the number of voters that participated in the Johnson-Seward elections of 1865. When it is remembered that large numbers of those who voted in these States in 1860 have disappeared in the war, and thousands more have moved to northern and western States, it will appear that the number of perjured traitors omitted from the list is quite too small to justify such deep grief among their northern friends. Again, it is alleged that we impose this plan upon the southern people against their will. Not at all, sir. The law provides that the electors may, on the same day they vote for delegates, vote also for or against a convention. All who dislike this plan can vote against it. Then, sir, unless it had a majority of all the voters—not only a majority of all the votes cast, but a majority of all the legal voters in the State, counting those who from any cause omit to vote against it—the whole plan falls to the ground. Again, when a constitution is framed it must be submitted to the people, and if a majority vote against it that is the end of it. What despotism is there in that?

But you have put the names of colored men upon your list of voters; why is that. Mr. Speaker, there is a large number of white voters in those States who are opposed to the continuance of the Federal Union. They have not only so said, but leagued themselves together to destroy it. To be sure the armed power of the confederacy has been overthrown, but its memory and purpose is still enshrined in the hearts of its followers. They put their money in that cause and now hold its bonds and notes. Their affections, going out to their fallen kindred, are in it. Their honor is linked with it, and as they crave a good name in the future they must forever defend it. The confederacy is gone, but the cause survives and comes back to struggle through the ballot-box for a triumph not achieved in the field. They will vote no pension to the crippled soldier nor honors to the gallant captain. The colored people in the States, on the contrary, are interested in the preservation of the Republic. They are grateful to it for liberty already conferred, and they look to it for future protection. We allowed them to vote because we saw in their votes justice to the soldier and safety to the Union. They are not numerous enough to out-vote the disunionists, to be sure; but they are numerous enough to counteract in some degree their wicked purpose. It so happened, in the Providence of God, that in seeking the perpetuity and safety of the Republic and the liberties vouchsafed to us all under it we could do some little justice to a long-wronged but hard-working and meritorious class of

our fellow-beings, and approximate more closely the great principle which underlies our form of government, to wit, the equality of the human race. We availed ourselves of this opportunity more, I fear, from necessity than from a sense of justice. This is "what is called unconstitutional, revolutionary, and despotic."

A bill of a few lines, supplementary to the legislation of March last, is now made the occasion to renew this coarse and undeserved denunciation. What is the bill? As long ago as last June the President discovered that the act of March was liable to be misconstrued or differently construed in the different districts of the South, and that no person was authorized to correct or unify these various constructions. We concur with the President. We propose to clothe an officer of the Army, superior in rank to any now charged with the execution of these laws, to supervise the whole, to detail officers and instruct them in their duties. It is in accordance with the President's suggestion. What possible objection can there be to that? None, I suppose; at least I have heard none. But it is claimed that we have made a mistake in selecting the officer who is to perform these duties. We have devolved them upon the General of the Army; whereas, it is said, that the Commander-in-Chief would have been the fitter officer. To a plain man it would seem as if the gentlemen were trifling. The rules of the army authorize the captain to supervise, his com-

pany and give orders to his inferior officers, the colonel his regiment, the brigadier his brigade, but the General of the Army commands the whole. We impose duties and liabilities upon each grade of officers, but nobody ever before supposed that it violated the Constitution of the United States.

The gentleman from Connecticut [Mr. HUBBARD] says that the General of the Army might order an inferior officer to one duty and the President order him to another at the same time. Does not that often occur? Has it not always occurred? The inferior must obey the Commander-in-Chief, but the Commander-in-Chief is answerable to his constitutional judges if he gives an order in violation of law. But there is another provision. It re-declares that the Johnson-Seward governments are void. I have already shown that these governments are void. Why should we not declare it by act of Congress? These are the simple and proper provisions which are so fiercely denounced as "unconstitutional, revolutionary, and despotic." From the other side of the House we do not hear even the gentlest admonition to the men who tore down and destroyed the old constitutional fabrics in these States; but every effort to rebuild them and restore the States to their old places in the Union is followed here with this unchanging cry: "Unconstitutional, revolutionary and despotic!" and then, without apparent shame, they charge us with interposing the obstacles to the readmission of these States.

SPEECH OF  
HON. JOHN A. BINGHAM,  
OF OHIO.

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Mr. BINGHAM rose and said:

Mr. Speaker, it is my purpose in the remarks that I make to confine myself to the discussion of the bill that is before the House. Having discharged my duty in this behalf, it will remain with the members of the House to discharge theirs.

As the organ of the House, Mr. Speaker, the Reconstruction Committee have after due deliberation, deemed it their duty to submit the bill in manner and form as it stands presented. I shall speak but few words in addition to those which I uttered in the opening of this discussion in support of the authority with which the people have clothed their representatives in Congress to enact this legislation.

Sir, I listened with due attention to the concededly able gentlemen who deemed it their duty to oppose this bill. I regret to say that denunciation with them assumed the place of argument, and in the storm of their denunciation the voice of reason itself was silenced. Those gentlemen, sir, whether conscious of it or not—I say it with all respect—in the heat and excitement of this controversy gave to party what was meant for mankind, and, forgetting for the moment the interests of our common country, enacted precisely the role which was played when the Constitution itself was on trial for its deliverance as it came from the hands of those mighty men whom God taught to build for glory and for beauty and to frame the fabric of American empire. The argument, sir, urged in that day against the ratification of the Constitution as it was approved by Washington and his associates was that it conferred, for the common defence, to suppress insurrection, and to repel invasion, unlimited power upon the legislative department of the Government. The gentlemen who oppose this bill might have found their objections, all of them, as well stated and as forcibly stated by the men who opposed the formation of our Government, the ratification of our Constitution, and the efforts of our people to assume their place in the family of nations, as they have in this debate stated them themselves. I answer the objections which have been urged against this measure in the

words of the men who framed our Constitution, and thereby proved themselves second to no men who ever lived since man was upon earth, and to whom were entrusted the destinies of a great people.

The words of Hamilton ought to be inscribed in this hour of our nation's trial upon the very lintels of your doors:

"The powers for the common defence ought to exist without limitation, because it is impossible to foresee or to define the extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and for this reason: no constitutional shackles can wisely be imposed upon the power to which it is committed."

Thus spoke Hamilton, a man almost matchless in his own age or any age, of the power vested by the Constitution in Congress to provide for the common defence, to suppress insurrection, and repel invasion.

And Madison, called "the father of the Constitution," took up those words and reiterated them in another form, saying that, "it is in vain to oppose constitutional barriers to the impulse of self-preservation." A higher law-giver than Madison or Hamilton, who was before worlds were, who will be when worlds perish, gave the law for the government of individual man and of collective men, the citizen and the State: preserve thy life.

It is the duty of this nation, to which, in the language of the fathers of the Republic, "God in his providence has committed the greatest trust ever committed to a political society," to preserve its own life.

That life was assailed, as the people of America and the people of the civilized world know full well, for four long years by armed revolt and treason. Three years have now well nigh elapsed since the broken battalions of that armed revolt surrendered to the victorious legions of the Republic.

When the cloud of battle lifted from the stricken fields of conflict, from the banks of the Potomac to the banks of the Rio Grande, the fact was disclosed that State institutions, constitutional State governments, had vanished in the strife and conflict of arms. The people of the United States—and when I speak of the "people of the United States" I speak of that American nationality organized under constitutional State



governments, standing by the Constitution, covering the continent, looking out upon Europe from their eastern and upon Asia from their western homes—that people in the hour of their triumph, with a magnanimity unparalleled in history, asked not indemnity for the past, but only security for the future.

In their proposition of restoration, as they presented it in 1865 and 1866, to the late insurgents in arms, the victorious people of the Republic asked only that an irrevocable covenant be placed in the Constitution of the United States, by the consent of the vanquished, which would make a like rebellion forever impossible, and which would realize, by the silent majesty and force of law, the grand purpose for which the Constitution itself was ordained; the establishment of justice and the security of liberty.

That is what the nation, by its representatives in Congress assembled, asked. The people of the North accepted it with a unanimity without a precedent in the political contests of this age, or of any age. It was rejected with scorn and contempt by those who but yesterday lifted their hands in violence against the holy temple of our liberties.

To-day, sir, we stand here, the Representatives of the people, to adopt and use such means as will enable such as have returned to their loyalty and such as never struck hands with those who engaged in this mad revolt to accept this condition, and in the language of the bill “be restored to political power in the Union.”

But, say gentlemen, you ask South Carolina before she is admitted to accept the constitutional amendment and ratify it. Most undoubtedly. Gentlemen say if she is not a State capable of exercising the political powers of a State within the Union can she ratify and accept the amendment? Most undoubtedly. Gentlemen reply it is impossible for South Carolina to exercise this power of ratification until she shall have been restored to representation in Congress.

Sir, I tell the gentlemen that the question which they raise was settled more than thirty years ago under the administration of President Jackson, by almost the united vote of Congress, instructed in their decision by the elaborate opinion of his then Attorney General. The people of an organized Territory, without any previous action of Congress authorizing what they did, exercised those rights which by the express terms of the Constitution are to be exercised only by States in the Union, namely, the election of two Senators to the Senate of the United States, which your Constitution declares in words can be chosen only “by the Legisla-

tures of the respective States of this Union.” They also elected a Representative to the Congress of the United States, which the first article of your Constitution declares shall be done only by the people of the several States. The people of that Territory did this months before they were admitted to this Union. Yet, sir, what they did was not undone; for the Congress of the United States, exercising the authority vested in it by the people, affirming what the people had done, by relation, made their acts valid; and from that day to this no man in America has challenged the legality of the proceeding.

The ratification of the fourteenth article of amendment is what we demand of the insurgent States in the name of the people. Gentlemen on the other side say this shall not be done. Let the people decide between us, whether those States shall impose taxation indefinitely to reimburse the cost of their rebellion and to make compensation for emancipated slaves; whether they shall come into this Hall and the Hall at the other end of the Capitol, and in the persons of their Senators and Representatives repudiate and violate the pledged faith of this nation. The nation that violates its faith is dishonored and must die. That is the issue which is made here. That is the issue upon which we go to the people. That is the purpose for which we enact this law. We say to the General of the Army, “Carry out the provisions of this act in good faith,” that the people of the States lately in insurrection may be speedily restored to political power in the Union.

My colleague, [Mr. CARV.] rises in his place and asks, “Is the General of the Army responsible if he violates this law and tramples upon the rights of the people?” I regret that my colleague deemed it his duty to make any such inquiry. Sir, the General of your Army, like all executive or judicial officers of this Government, is neither above the people nor above the power of the people’s laws. The General of your Army is but the creature of a congressional enactment. The breath that made him General may unmake him to-morrow. I answer my colleague further that, if the General of the Army be guilty of any violation of this law, he is liable, by the very terms of the fifth section, to be arraigned before a civil tribunal of the United States upon indictment, held to answer for his high misdemeanor, and upon conviction must take his place in the penitentiary and pay a forfeit not exceeding five thousand dollars, as provided in the bill. I trust that my colleague is altogether satisfied with the severity of the penalty.

Another objection raised by these gentlemen is that by this bill we invade the province and power of the judiciary. Sir, I respect

national judiciary as much as any gentleman who volunteers here to be its defender. Sir, in this contest I cannot forget if I hold the utterance of that profound man, Montesquieu, who, speaking of the three departments of Government, legislative, executive, and judicial, declared what every man knows to be the truth touching the power of each to deal with those questions which touch the foundations of civil government, the "judiciary is next to nothing." It is neither force nor will, nothing but judgment, and no power to execute that save at the pleasure of the Executive. The judiciary has its functions to perform. I am perfectly satisfied that the judiciary should be left free and untrammelled in the faithful and honest performance of those functions. But, sir, the judiciary of the United States has no power to review the political questions intrusted exclusively to the legislative department of this Government, among which is that involved in this legislation whether a community is or is not a State within this Union, and whether it has or has not a republican form of Government. This question has long since come before that high tribunal, the Supreme Court of the United States, and it has solemnly decided that it is a question for the political department of the Government, and that the decision of it by that department concludes the judiciary. Why, sir, it must be self-evident that if the judiciary of the United States has the power to intervene in this matter and decide the contrary to the decision of Congress, that South Carolina has now a republican form of government, and is entitled to exercise political power in this Union, the same judicial tribunal may also intervene and decide to-morrow the very converse of that proposition in regard to Ohio. If the Supreme Court of the United States can decide on one State that it has a republican government and is entitled to exercise political power in the Union, it may decide as to all the residue of the States that they have not a republican government and are not entitled to exercise political power. Why, sir, that would put it in the power of a bare majority, as the law now stands, of the court to pronounce final judgment against the life of this nation. The nation's life is under the shelter of the nation's laws. The Supreme Court cannot touch that question. Sir, whenever the Supreme Court tries to interfere with that question and decide it against the declared decision of the legislative powers of the nation, it lays violent hands upon the very ark of the covenant of the people, and ought to suffer instant annihilation. Let that tribunal recognize without challenge as conclusive the broad

seal of the State of Ohio when it comes there by force of the act of Congress, and so of every other State in the Union.

Why, say gentlemen, this could not apply to the original States. I beg gentlemen's pardon; it does; for that same court declares this recognition of the existence of the constitution of every State government in the Union is solemnly declared by Congress every year in the admission of Representatives to this floor. There is no room for controversy about this question. But it is further objected to the bill that there is no grant in the Constitution authorizing Congress to vest in the General of the Army power to detail officers of the army as is therein provided. Permit me to say that it is expressly provided in the Constitution, as though to meet this very emergency, that the "Congress shall have power to make rules," that is, laws, "for the government and regulation of the land and naval forces." Why, said Mr. Madison, it is the very essence of executive power faithfully to execute the laws, and faithfully execute the laws in manner and form as the laws themselves prescribe for their execution. That there might be no mistake about it, that even the wayfaring man might not err therein, the makers of the Constitution used the words in the instrument itself, that the President, who is vested with the executive authority, shall take care that the laws be faithfully executed, and that he should not evade in any manner the discharge of this high trust—they took care to provide further that he should be bound by oath—that adamant chain which binds the consciences of men to the throne of eternal justice—to execute to the letter this requirement of the Constitution and faithfully execute the laws.

Mr. CARY rose.

Mr. BINGHAM. I cannot yield now. Let the President discharge faithfully his duty, let him regard the obligation of his official oath, and all is well with the Republic. Gentlemen need not speak of the law oppressing anybody or wronging anybody or outraging anybody. No such legislation is proposed. It was the right of the victorious people of the Republic to make inquest for blood all over that land which is ridged with the graves of your unreturning braves, and consign the guilty either to the darkness of the grave to sleep, the sleep of death in a felon's tomb, or to go into returnless banishment. As one of their Representatives, I say it with pride and gratitude, the people have otherwise decreed. That great and generous people only insist that civil governments shall be restored, and restored speedily, in accordance with their own law, over that vast belt of country lately blasted with armed rebellion. That country



is three times the area of the empire of France, and is capable of furnishing homes of abundance and comfort to three times the population of France, more than one hundred million freemen. It is a part, sir, of your native land and mine, and I stand here as the Representative of the people to insist that it shall rise from its ashes, clothed in the form and dignity of law, and invite thither the industrial power of the representatives of every civilized nation of the globe, and pay its tribute from year to year and from generation to generation to the Treasury of our common country in order to make good our plighted faith to the living and dead defenders of the Republic."

Let this be done, Mr. Speaker, and all is well with the living millions and the millions who are to come after us. Let this be done, and the dream of the illustrious founders of the Republic will be fully and speedily realized. Let this be done, and that word, the Republic is saved, will go out over all the earth and shake the foundations of every tyrant's throne and compel every despot to hold the reins of power with a tremulous and unsteady hand. Surely something will have been gained for humanity, the world over, when in the land of Washington, of Madison, of Jefferson, and Franklin, filled with a people second to none among the nations of the world, it shall be acknowledged that before the majesty of their law every human being is equal—equal in the rights of person, equal in those rights which are as universal as the material structure of man, equal in those rights which are the gift of God, and to protect which governments are instituted among men. I submit that gentlemen do but imitate the example of those who contrived this rebellion years ago in the councils of the nation, by the arguments which they adduce here in answer to what we have said and what we say now in support of this measure. When I repeat the utterances and reiterate the deathless words of your immortal Declaration, every one of which, like the words of Luther, were half battles, gentlemen rise in their places, as their predecessors did years ago in the Senate, and declare that the words of the Declaration are but glittering generalities, rhetorical flourishes, and the self-evident truth itself, that all men are created equal and endowed with the rights of life and liberty by the common Father, who is the God of all the nations, is, after all, but a self-evident lie. That is their answer. It is all "rhetoric," it is a "glittering generality," it is a "self-evident lie."

Sir, it is written in your Constitution that there are persons who are natural-born citi-

zens in this land. I would like to know by what method of reasoning gentlemen revive the ancient dogma that this world was made for Caesar. I would like to know how gentlemen on this floor have arrived at the conclusion that any of their fellow citizens, born with them within the limits of this Republic, have not the same right to live here, and, God so please, to die here, as the gentlemen themselves? That is one of the issues involved in this contest—the right of every natural-born, law-abiding citizen of the Republic to live on the spot of his origin. I have no doubt we could get rid of all controversy at once if we would surrender the great trust given to us and say to the men, red with the blood of our murdered countrymen, seize again the control of all the political power of the nine disorganized States, trample down under your iron heel the four million native-born children of the Republic, who were once citizen-slaves, now citizen-free men, the men who never forgot during all the four years of conflict that your flag was the symbol of liberty; the men who never forgot to whisper a word of cheer and comfort to the wounded and dying soldiers of the Republic in the great struggle for the nation's life; the men who never failed to aid your defenders in their escape from those prison-pens in which their comrades were subjected to untimely death by the slow tortures of famine and poison. Surrender these men, faithful to the last, to the traitors in rebellion, and the contest is ended. Allow Jefferson Davis to come back and sit down in his senatorial robes in the Senate; call home that hatchet-faced conspirator from France (Slidell of Louisiana) and restore him to his place; call home that other Senator watching across the border in Canada (Mason) and restore him to his place; call back all the Representatives who went out in the year 1861 from this Hall clothed with perjury as with a garment, lifting their hands in violence against your Government and Constitution, and the contest will be ended.

Sir, I cannot speak for others, but for myself, so help me God! living or dying, I am against any such proposition. Let the friends of the Republic ever keep the Republic in their hands. That being done its safety is assured, and the time will come within the life, I trust, of every man now honoring me with his attention, when the laws of the Republic in all our borders will be so just, so humane, so impartial in their justice and in their humanity, that the poorest and the humblest human being between these oceans will find equal protection with the richest, the noblest, and the most powerful citizen.







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# RECONSTRUCTION.

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## SPEECHES

OF

HON. S. W. SCOFIELD, OF PENN.,

AND

HON. JOHN A. BINGHAM, OF OHIO,

*Delivered in the United States House of Representatives, January 20th, 1868.*

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On the bill (H. R. No. 439) additional and supplementary to an act entitled "An act to provide for the more efficient government of the rebel states," passed March 2, 1867.

Mr. SCOFIELD rose and said:

Why is it, Mr. Speaker, that all reconstruction legislation is regarded by one side of this House as unconstitutional, revolutionary, and despotic, while the other side, more numerous, not less honest, not less patriotic, not less learned in the principles of the Constitution, not less devoted to human liberty nor opposed to every form of human oppression, look upon the same legislation as constitutional, appropriate, and necessary? I impugn the motives of neither side, but I ask for a solution of this disagreement. I suppose it is because the two sides of the House look at the subject from different standpoints. One side holds that the confederate States are now, and all the time have been, constructed and ready for admission; while the other side hold that the regular constitutional State governments were destroyed by the war, and that new ones must be originated by somebody to take their place before they can elect Senators and Representatives to Congress. From these standpoints the view of either side is correct. It was somewhat so during the war. One party started out with the theory that it was unconstitutional to coerce a sovereign State into submission to the General Government, and of course from this stand-point all war measures were unconstitutional; while the other party, holding that coercion was constitutional, approved of all measures calculated to accomplish that result.

The difference between us on the question of reconstruction is mainly a question of fact. If it be true that the confederate States have now legal and constitutional governments all reconstruction is, as is claimed, unconstitutional, revolutionary, and despotic; but if they have no such governments it must be admitted that reconstruction of some kind is an absolute necessity. If South Carolina, for instance, has now or has had since 1861 a legal State government, I will thank some gentleman on the other side to tell me what it is. Is it the old government that existed prior to the war? I admit that this constitution is printed in a book and laid away in the libraries of the country, but I deny that it has any existence outside of books. If it has any other existence, where is it? It has no Governor, no Legislature, no judge. There is not a single gentleman within the limits of the State who professes allegiance to it, and no one inquires what it prohibits or what it commands. It is like the unsepulchered skull—

"Sans teeth, sans eyes, sans taste, sans everything." I know the gentleman from Indiana [Mr. KERR] claimed the other day that the State government might be revived. Indeed I think he said it had been revived. But that would involve the exercise of all the power that anybody claims in the legislation which we are now enacting. To reconstruct and to revive a government that is dead means the same thing.

Is it the confederate State government that exists in South Carolina? It did exist there, when Congress adjourned in March, 1865; but when we assembled in December, 1865,



it had disappeared. Mr. Johnson and his Secretary of State had gone down there and disposed of it. They had scuttled the hull and sent the confederate ship, with all its reasonable machinery, to the bottom, leaving to the country nothing but the hateful memory of its crimes.

But Mr. Johnson and Mr. Seward have set up some governments in the late confederate States, and it is said that Congress should recognize them. Why? Because they have been accepted by the people there? No, sir; they were not submitted to the people in any State except North Carolina, and in that State a majority voted against it. And in the election of delegates to the conventions only about one-third of the white voters participated at all, and a portion of those gave their votes against the whole scheme. Of course the blacks were excluded altogether. Shall we accept them because they are republican in form? No, sir. A large portion of the people, in two of the States, at least more than half, are excluded from all participation in them. Shall we accept them because they secure to those States only a fair proportion of Federal representation? No, sir; the represented people in South Carolina and Mississippi secure a little more than twice as many votes in this House and in the Electoral College as are given to the same number of represented people in Pennsylvania or any northern State. Are we bound to accept them because they had a lawful origin? What article of the Constitution or what law of Congress authorizes the President and his Secretary to start in the business of making State governments or to coerce and cajole a handful of the people to co-operate with them in such an undertaking? Do you not recollect, Mr. Speaker, that in the summer of 1865, while Mr. Johnson and Seward were still reconstructing, our political opponents applied to their work the same three ugly words that they now apply to our plan—"unconstitutional, revolutionary, and despotic?" Before they discovered how bad these governments would be, they taught us the principles upon which they ought to be rejected. We were bound, then, by no principle of law, equality, or justice to accept these anti-republican productions of the President, and Congress rejected them by a majority of nearly three-fourths. The question was submitted to the people at the elections in the fall of 1866, and after four months' debate they indorsed the action of Congress by an emphatic vote. Inasmuch, then, as these governments were illegal in their origin, (our opponents themselves being judges;) inasmuch as they were never sanctioned by any considerable portion of the people, white or black, in those

States; inasmuch as they secure to a disloyal population nearly double as much power in the Federal Government as the same amount of loyal population in other States possess, and inasmuch as they were rejected by nearly three-fourths of Congress, and that action indorsed by the people, I come to the conclusion that they are not governments which any man is bound by law or justice to respect.

But the gentleman from New York [Mr. Brooks] thinks the decision of the people in 1866 is not conclusive. He infers from the elections of 1867 that public sentiment is changing, and that in 1868 a President and Congress will be chosen whose political opinions will coincide with his own. He is kind enough to inform us what will then be done. "The enactments of the last six years," says he, "shall be repealed." Humanity, justice, and equality shall be dethroned, and the old slave power, unchristian, intolerant, insolent, and cruel, shall reign in their stead. Suppose your dreams were realized; suppose the people in an evil hour had put you in possession of all the departments of the Government; suppose the gentlemen who during the last six years have wrought such terrible ruin in the South and brought such deep sorrow to the North and all the land were here to aid or lead your efforts; suppose the servile code restored, fugitive slave law and all; suppose the demolished slave prisons rebuilt, the rusty manacles reburnished, and the overseers engaged, how will the gentleman secure his victims? His legislative work will then be accomplished; his services will no longer be needed here. Imagine the gentleman then leaving his place and going home to ask his Christian constituents, learned through his instructions in the mysteries and measurement of shins and heels, to arm themselves with lassoes and handcuffs and follow him in one grand hunt for emancipated bondmen. The gentleman and his party, in great patience and meekness, have long labored for the disloyal masters; but when this heavy task shall be imposed upon them it will be one hair too much even for their uncomplaining backs. This utterance of unattainable hopes brought to the gentleman's seat many admiring friends. I could not hear the congratulations, but I can well imagine they were much like Falstaff's address to his prince: "Thou wilt have no back seats for traitors and no free niggers in America when thou art king; wilt thou, Hal?"

Having shown that there are not now, and have not been since the close of the war, any legal constitutional governments in these States, I proceed to enquire who should originate new ones. If I correctly understand

gentlemen on the other side they claim that new governments ought to originate with the people of the States. Very well, sir; how long shall we wait for these people to move? It is more than two years since the war closed, and no unprompted movement in that direction has been made by them to this hour. Oh no; I mistake. They did elect a convention in Louisiana, and it will be recollected that there was great joy among the anti-progressives and back-going politicians when it was known that the delegates were mobbed and murdered, the convention dispersed, and the popular movement crushed out. Suppose the people of South Carolina, for instance, would undertake to construct a government. The disloyal people might originate one, the blacks another, and the loyal white men another. Congress must determine at last which is the real government of the State, and this determination involves the exercise of the same power necessary to the passage of our reconstruction acts. But, as I said before, the people have not moved in this matter at all. There is, therefore, no alternative. Congress must call upon and authorize the people to reconstruct their governments or leave them either under military rule or rebel anarchy forever. On the 2d of March last Congress passed an act for this purpose. And what was it? Simply this: it authorized a major-general in the Army to make a list of all the legal voters in a particular State, and call upon them to assemble on a day fixed and elect delegates of their own free choice to a convention which should frame and submit to them a form of State government. That, sir, was our reconstruction, and that was all of it. That is what is now pronounced unconstitutional, revolutionary, and despotic. I forgot, sir; that is not quite all. It authorized the officer, in the absence of governments, and in the midst of vindictive and lawless men, to preserve the peace until the new governments should come in power. Our opponents have found a few things to be mad at even in this simple formula. They charge that we omitted from the list of voters a large number of persons, simply because they waged a long and bloody war against a Government not only the best, but most lenient and munificent in the world. I deny it. Not one man was left off the list for this cause alone; and only a small number was left off for any cause. Those who committed treason, and in order to commit this crime first committed perjury, were left off, and no others. The number was comparatively small. The number of white voters now registered under this law is only 76,000 less than all the votes in these States in 1860, and is just about

double the number of voters that participated in the Johnson-Seward elections of 1865. When it is remembered that large numbers of those who voted in these States in 1860 have disappeared in the war, and thousands more have moved to northern and western States, it will appear that the number of perjured traitors omitted from the list is quite too small to justify such deep grief among their northern friends. Again, it is alleged that we impose this plan upon the southern people against their will. Not at all, sir. The law provides that the electors may, on the same day they vote for delegates, vote also for or against a convention. All who dislike this plan can vote against it. Then, sir, unless it had a majority of all the voters—not only a majority of all the votes cast, but a majority of all the legal voters in the State, counting those who from any cause omit to vote against it—the whole plan falls to the ground. Again, when a constitution is framed it must be submitted to the people, and if a majority vote against it that is the end of it. What despotism is there in that?

But you have put the names of colored men upon your list of voters; why is that. Mr. Speaker, there is a large number of white voters in those States who are opposed to the continuance of the Federal Union. They have not only so said, but leagued themselves together to destroy it. To be sure the armed power of the confederacy has been overthrown, but its memory and purpose is still enshrined in the hearts of its followers. They put their money in that cause and now hold its bonds and notes. Their affections, going out to their fallen kindred, are in it. Their honor is linked with it, and as they crave a good name in the future they must forever defend it. The confederacy is gone, but the cause survives and comes back to struggle through the ballot-box for a triumph not achieved in the field. They will vote no pension to the crippled soldier nor honors to the gallant captain. The colored people in the States, on the contrary, are interested in the preservation of the Republic. They are grateful to it for liberty already conferred, and they look to it for future protection. We allowed them to vote because we saw in their votes justice to the soldier and safety to the Union. They are not numerous enough to out-vote the disunionists, to be sure; but they are numerous enough to counteract in some degree their wicked purpose. It so happened, in the Providence of God, that in seeking the perpetuity and safety of the Republic and the liberties vouchsafed to us all under it we could do some little justice to a long-wronged but hard-working and meritorious class of



our fellow-beings, and approximate more closely the great principle which underlies our form of government, to wit, the equality of the human race. We availed ourselves of this opportunity more, I fear, from necessity than from a sense of justice. This is "what is called unconstitutional, revolutionary, and despotic."

A bill of a few lines, supplementary to the legislation of March last, is now made the occasion to renew this coarse and undeserved denunciation. What is the bill? As long ago as last June the President discovered that the act of March was liable to be misconstrued or differently construed in the different districts of the South, and that no person was authorized to correct or unify these various constructions. We concur with the President. We propose to clothe an officer of the Army, superior in rank to any now charged with the execution of these laws, to supervise the whole, to detail officers and instruct them in their duties. It is in accordance with the President's suggestion. What possible objection can there be to that? None, I suppose; at least I have heard none. But it is claimed that we have made a mistake in selecting the officer who is to perform these duties. We have devolved them upon the General of the Army; whereas, it is said, that the Commander-in-Chief would have been the fitter officer. To a plain man it would seem as if the gentlemen were trifling. The rules of the army authorize the captain to supervise his com-

pany and give orders to his inferior officers, the colonel his regiment, the brigadier his brigade, but the General of the Army commands the whole. We impose duties and liabilities upon each grade of officers, but nobody ever before supposed that it violated the Constitution of the United States.

The gentleman from Connecticut [Mr. HUBBARD] says that the General of the Army might order an inferior officer to one duty and the President order him to another at the same time. Does not that often occur? Has it not always occurred? The inferior must obey the Commander-in-Chief, but the Commander-in-Chief is answerable to his constitutional judges if he gives an order in violation of law. But there is another provision. It re-declares that the Johnson-Seward governments are void. I have already shown that these governments are void. Why should we not declare it by act of Congress? These are the simple and proper provisions which are so fiercely denounced as "unconstitutional, revolutionary, and despotic." From the other side of the House we do not hear even the gentlest admonition to the men who tore down and destroyed the old constitutional fabrics in these States; but every effort to rebuild them and restore the States to their old places in the Union is followed here with this unchanging cry: "Unconstitutional, revolutionary and despotic!" and then, without apparent shame, they charge us with interposing the obstacles to the readmission of these States.



# SPEECH OF HON. JOHN A. BINGHAM, OF OHIO.

Mr. BINGHAM rose and said:

Mr. Speaker, it is my purpose in the remarks that I make to confine myself to the discussion of the bill that is before the House. Having discharged my duty in this behalf, it will remain with the members of the House to discharge theirs.

As the organ of the House, Mr. Speaker, the Reconstruction Committee have after due deliberation, deemed it their duty to submit the bill in manner and form as it stands presented. I shall speak but few words in addition to those which I uttered in the opening of this discussion in support of the authority with which the people have clothed their representatives in Congress to enact this legislation.

Sir, I listened with due attention to the concededly able gentlemen who deemed it their duty to oppose this bill. I regret to say that denunciation with them assumed the place of argument, and in the storm of their denunciation the voice of reason itself was silenced. Those gentlemen, sir, whether conscious of it or not—I say it with all respect—in the heat and excitement of this controversy gave to party what was meant for mankind, and, forgetting for the moment the interests of our common country, enacted precisely the role which was played when the Constitution itself was on trial for its deliverance as it came from the hands of those mighty men whom God taught to build for glory and for beauty and to frame the fabric of American empire. The argument, sir, urged in that day against the ratification of the Constitution as it was approved by Washington and his associates was that it conferred, for the common defence, to suppress insurrection, and to repel invasion, unlimited power upon the legislative department of the Government. The gentlemen who oppose this bill might have found their objections, all of them, as well stated and as forcibly stated by the men who opposed the formation of our Government, the ratification of our Constitution, and the efforts of our people to assume their place in the family of nations, as they have in this debate stated them themselves. I answer the objections which have been urged against this measure in the

words of the men who framed our Constitution, and thereby proved themselves second to no men who ever lived since man was upon earth, and to whom were entrusted the destinies of a great people.

The words of Hamilton ought to be inscribed in this hour of our nation's trial upon the very lintels of your doors:

"The powers for the common defence ought to exist without limitation, because it is impossible to foresee or to define the extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed upon the power to which it is committed."

Thus spoke Hamilton, a man almost matchless in his own age or any age, of the power vested by the Constitution in Congress to provide for the common defence, to suppress insurrection, and repel invasion.

And Madison, called "the father of the Constitution," took up those words and reiterated them in another form, saying that, "it is in vain to oppose constitutional barriers to the impulse of self-preservation." A higher law-giver than Madison or Hamilton, who was before worlds were, who will be when worlds perish, gave the law for the government of individual man and of collective men, the citizen and the State: preserve thy life.

It is the duty of this nation, to which, in the language of the fathers of the Republic, "God in his providence has committed the greatest trust ever committed to a political society," to preserve its own life.

That life was assailed, as the people of America and the people of the civilized world know full well, for four long years by armed revolt and treason. Three years have now well nigh elapsed since the broken battalions of that armed revolt surrendered to the victorious legions of the Republic.

When the cloud of battle lifted from the stricken fields of conflict, from the banks of the Potomac to the banks of the Rio Grande, the fact was disclosed that State institutions, constitutional State governments, had vanished in the strife and conflict of arms. The people of the United States—and when I speak of the "people of the United States" I speak of that American nationality organized under constitutional State

governments, standing by the Constitution, covering the continent, looking out upon Europe from their eastern and upon Asia from their western homes—that people in the hour of their triumph, with a magnanimity unparalleled in history, asked not indemnity for the past, but only security for the future.

In their proposition of restoration, as they presented it in 1865 and 1866, to the late insurgents in arms, the victorious people of the Republic asked only that an irrevocable covenant be placed in the Constitution of the United States, by the consent of the vanquished, which would make a like rebellion forever impossible, and which would realize, by the silent majesty and force of law, the grand purpose for which the Constitution itself was ordained; the establishment of justice and the security of liberty.

That is what the nation, by its representatives in Congress assembled, asked. The people of the North accepted it with a unanimity without a precedent in the political contests of this age, or of any age. It was rejected with scorn and contempt by those who but yesterday lifted their hands in violence against the holy temple of our liberties.

To-day, sir, we stand here, the Representatives of the people, to adopt and use such means as will enable such as have returned to their loyalty and such as never struck hands with those who engaged in this mad revolt to accept this condition, and in the language of the bill “be restored to political power in the Union.”

But, say gentlemen, you ask South Carolina before she is admitted to accept the constitutional amendment and ratify it. Most undoubtedly. Gentlemen say if she is not a State capable of exercising the political powers of a State within the Union can she ratify and accept the amendment? Most undoubtedly. Gentlemen reply it is impossible for South Carolina to exercise this power of ratification until she shall have been restored to representation in Congress.

Sir, I tell the gentlemen that the question which they raise was settled more than thirty years ago under the administration of President Jackson, by almost the united vote of Congress, instructed in their decision by the elaborate opinion of his then Attorney General. The people of an organized Territory, without any previous action of Congress authorizing what they did, exercised those rights which by the express terms of the Constitution are to be exercised only by States in the Union, namely, the election of two Senators to the Senate of the United States, which your Constitution declares in words can be chosen only “by the Legisla-

tures of the respective States of this Union.” They also elected a Representative to the Congress of the United States, which the first article of your Constitution declares shall be done only by the people of the several States. The people of that Territory did this months before they were admitted to this Union. Yet, sir, what they did was not undone; for the Congress of the United States, exercising the authority vested in it by the people, affirming what the people had done, by relation, made their acts valid; and from that day to this no man in America has challenged the legality of the proceeding.

The ratification of the fourteenth article of amendment is what we demand of the insurgent States in the name of the people. Gentlemen on the other side say this shall not be done. Let the people decide between us, whether those States shall impose taxation indefinitely to reimburse the cost of their rebellion and to make compensation for emancipated slaves; whether they shall come into this Hall and the Hall at the other end of the Capitol, and in the persons of their Senators and Representatives repudiate and violate the plighted faith of this nation. The nation that violates its faith is dishonored and must die. That is the issue which is made here. That is the issue upon which we go to the people. That is the purpose for which we enact this law. We say to the General of the Army, “Carry out the provisions of this act in good faith,” that the people of the States lately in insurrection may be speedily restored to political power in the Union.

My colleague, [Mr. CARY,] rises in his place and asks, “Is the General of the Army responsible if he violates this law and tramples upon the rights of the people?” I regret that my colleague deemed it his duty to make any such inquiry. Sir, the General of your Army, like all executive or judicial officers of this Government, is neither above the people nor above the power of the people’s laws. The General of your Army is but the creature of a congressional enactment. The breath that made him General may unmake him to-morrow. I answer my colleague further that, if the General of the Army be guilty of any violation of this law, he is liable, by the very terms of the fifth section, to be arraigned before a civil tribunal of the United States upon indictment, held to answer for his high misdemeanor, and upon conviction must take his place in the penitentiary and pay a forfeit not exceeding five thousand dollars, as provided in the bill. I trust that my colleague is altogether satisfied with the severity of the penalty.

Another objection raised by these gentlemen is that by this bill we invade the province and power of the judiciary. Sir, I respect



the national judiciary as much as any gentleman who volunteers here to be its defender. But, sir, in this contest I cannot forget if I would the utterance of that profound man, Montesquieu, who, speaking of the three departments of Government, legislative, executive, and judicial, declared what every man knows to be the truth touching the power of each to deal with those questions which go to the foundations of civil government, that the "judiciary is next to nothing." It has neither force nor will, nothing but judgment, and no power to execute that save at the pleasure of the Executive. The judiciary has its functions to perform. I am perfectly willing that the judiciary should be left free and untrammelled in the faithful and honest performance of those functions. But, sir, the judiciary of the United States has no power to review the political questions intrusted exclusively to the legislative department of this Government, among which is that involved in this legislation whether a community is or is not a State within this Union, and whether it has or has not a republican form of Government. This question has long since come before that high tribunal, the Supreme Court of the United States, and it has solemnly decided that it is a question for the political department of the Government, and that the decision of it by that department concludes the judiciary.

Why, sir, it must be self-evident that if the judiciary of the United States has the power to intervene in this matter and decide to-day, contrary to the decision of Congress, that South Carolina has now a republican form of government, and is entitled to exercise political power in this Union, the same judicial tribunal may also intervene and decide to-morrow the very converse of that proposition in regard to Ohio. If the Supreme Court of the United States can decide of one State that it has a republican government and is entitled to exercise political power in the Union, it may decide as to all the residue of the States that they have not republican governments and are not entitled to exercise political power.

Why, sir, that would put it in the power of a bare majority, as the law now stands, of the court to pronounce final judgment against the life of this nation. The nation's life is under the shelter of the nation's laws. The Supreme Court cannot touch that question. Sir, whenever the Supreme Court dares to interfere with that question and decide it against the declared decision of the legislative powers of the nation, it lays violent hands upon the very ark of the covenant of the people, and ought to suffer instant annihilation. Let that tribunal recognize without challenge as conclusive the broad

seal of the State of Ohio when it comes there by force of the act of Congress, and so of every other State in the Union.

Why, say gentlemen, this could not apply to the original States. I beg gentlemen's pardon; it does; for that same court declares this recognition of the existence of the constitution of every State government in the Union is solemnly declared by Congress every year in the admission of Representatives to this floor. There is no room for controversy about this question. But it is further objected to the bill that there is no grant in the Constitution authorizing Congress to vest in the General of the Army power to detail officers of the army as is therein provided. Permit me to say that it is expressly provided in the Constitution, as though to meet this very emergency, that the "Congress shall have power to make rules," that is, laws, "for the government and regulation of the land and naval forces." Why, said Mr. Madison, it is the very essence of executive power faithfully to execute the laws, and faithfully execute the laws in manner and form as the laws themselves prescribe for their execution. That there might be no mistake about it, that even the wayfaring man might not err therein, the makers of the Constitution used the words in the instrument itself, that the President, who is vested with the executive authority, shall take care that the laws be faithfully executed, and that he should not evade in any manner the discharge of this high trust—they took care to provide farther that he should be bound by oath—that adamant chain which binds the consciences of men to the throne of eternal justice—to execute to the letter this requirement of the Constitution and faithfully execute the laws.

Mr. CARY rose.

Mr. BINGHAM. I cannot yield now. Let the President discharge faithfully his duty, let him regard the obligation of his official oath, and all is well with the Republic. Gentlemen need not speak of the law oppressing anybody or wronging anybody or outraging anybody. No such legislation is proposed. It was the right of the victorious people of the Republic to make inquest for blood all over that land which is ridged with the graves of your unreturning braves, and consign the guilty either to the darkness of the grave to sleep the sleep of death in a felon's tomb, or to go into returnless banishment. As one of their Representatives, I say it with pride and gratitude, the people have otherwise decreed. That great and generous people only insist that civil governments shall be restored, and restored speedily, in accordance with their own law, over that vast belt of country lately blasted with armed rebellion. That country



is three times the area of the empire of France, and is capable of furnishing homes of abundance and comfort to three times the population of France, more than one hundred million freemen. It is a part, sir, of your native land and mine, and I stand here as the Representative of the people to insist that it shall rise from its ashes, clothed in the form and dignity of law, and invite thither the industrial power of the representatives of every civilized nation of the globe, and pay its tribute from year to year and from generation to generation to the Treasury of our common country in order to make good our plighted faith to the living and dead defenders of the Republic.

Let this be done, Mr. Speaker, and all is well with the living millions and the millions who are to come after us. Let this be done, and the dream of the illustrious founders of the Republic will be fully and speedily realized. Let this be done, and that word, the Republic is saved, will go out over all the earth and shake the foundations of every tyrant's throne and compel every despot to hold the reins of power with a tremulous and unsteady hand. Surely something will have been gained for humanity, the world over, when in the land of Washington, of Madison, of Jefferson, and Franklin, filled with a people second to none among the nations of the world, it shall be acknowledged that before the majesty of their law every human being is equal—equal in the rights of person, equal in those rights which are as universal as the material structure of man, equal in those rights which are the gift of God, and to protect which governments are instituted among men. I submit that gentlemen do but imitate the example of those who contrived this rebellion years ago in the councils of the nation, by the arguments which they adduce here in answer to what we have said and what we say now in support of this measure. When I repeat the utterances and reiterate the deathless words of your immortal Declaration, every one of which, like the words of Luther, were half battles, gentlemen rise in their places, as their predecessors did years ago in the Senate, and declare that the words of the Declaration are but glittering generalities, rhetorical flourishes, and the self-evident truth itself, that all men are created equal and endowed with the rights of life and liberty by the common Father, who is the God of all the nations, is, after all, but a self-evident lie. That is their answer. It is all "rhetoric," it is a "glittering generality," it is a "self-evident lie."

Sir, it is written in your Constitution that there are persons who are natural-born citi-

zens in this land. I would like to know by what method of reasoning gentlemen revive the ancient dogma that this world was made for Cæsar. I would like to know how gentlemen on this floor have arrived at the conclusion that any of their fellow citizens, born with them within the limits of this Republic, have not the same right to live here, and, if God so please, to die here, as the gentlemen themselves? That is one of the issues involved in this contest—the right of every natural-born, law-abiding citizen of the Republic to live on the spot of his origin. I have no doubt we could get rid of all controversy at once if we would surrender the great trust given to us and say to the men, red with the blood of our murdered countrymen, seize again the control of all the political power of the nine disorganized States, trample down under your iron heel the four million native-born children of the Republic, who were once citizen-slaves, now citizen-freemen, the men who never forgot during all the four years of conflict that your flag was the symbol of liberty; the men who never forgot to whisper a word of cheer and comfort to the wounded and dying soldiers of the Republic in the great struggle for the nation's life; the men who never failed to aid your defenders in their escape from those prison-pens in which their comrades were subjected to untimely death by the slow tortures of famine and poison. Surrender these men, faithful to the last, to the traitors in rebellion, and the contest is ended. Allow Jefferson Davis to come back and sit down in his senatorial robes in the Senate; call home that hatchet-faced conspirator from France (Slidell of Louisiana) and restore him to his place; call home that other Senator watching across the border in Canada (Mason) and restore him to his place; call back all the Representatives who went out in the year 1861 from this Hall clothed with perjury as with a garment, lifting their hands in violence against your Government and Constitution, and the contest will be ended.

Sir, I cannot speak for others, but for myself, so help me God! living or dying, I am against any such proposition. Let the friends of the Republic ever keep the Republic in their hands. That being done its safety is assured, and the time will come within the life, I trust, of every man now honoring me with his attention, when the laws of the Republic in all our borders will be so just, so humane, so impartial in their justice and in their humanity, that the poorest and the humblest human being between these oceans will find equal protection with the richest, the noblest, and the most powerful citizen.







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INCOME TAX.

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SPEECH

OF

HON. JOHN SCOTT,

OF PENNSYLVANIA,

DELIVERED

IN THE SENATE OF THE UNITED STATES,

JUNE 22 AND 23, 1870.

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WASHINGTON:  
F. & J. RIVES & GEO. A. BAILEY,  
REPORTERS AND PRINTERS OF THE DEBATES OF CONGRESS.  
1870.

OFFICE

OF

THE

UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.  
BUREAU OF LANDS  
OFFICE OF THE REGISTER OF LANDS  
WASHINGTON, D. C.

## INCOME TAX.

The Senate having under consideration the bill (H. R. No. 2045) to reduce internal taxes, and for other purposes—

Mr. SCOTT said:

Mr. PRESIDENT: At this late day in the session I do not propose to make any extended argument on the question involved in this motion. It has heretofore to some extent been the subject of discussion in the Senate; but there are some views of this question to which I deem it proper to turn attention for a few moments, and I do not propose, as I have already said, to occupy much of the time of the Senate in doing so.

The first thing to which I call attention is the language of the act imposing the income tax, for it is very nearly the same in the bill now reported by the Finance Committee that it was in the act which has expired. The tax is imposed "on the gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatsoever, a tax of five per cent. on the amount so derived over \$1,000." This is now proposed to be changed by making it a tax of three per cent. on all over \$2,000.

The first question presented by this act is whether this is or is not a direct tax. I do not propose, as I have already said, to weary the Senate with a legal argument upon that question, but to call attention to the decisions which have been made upon it, and to the fact that those decisions have been based upon what is termed the history of that clause of the Constitution referring to direct taxation; and I shall, instead of making a legal argument, cite

some historical authorities in opposition to the historical authority upon which these judicial decisions have been based.

There have been three cases in which the question, what is a direct tax under the Constitution of the United States? have been considered. They are: "*Hylton vs. The United States*," reported in 3 Dallas, 171, and decided in 1796; the case of "*The Pacific Insurance Company vs. Soule*," reported in 7 Wallace, 434, and decided in 1868; and the *Veazie Bank vs. Fenno*, reported in 8 Wallace, 533, decided in 1869; the latter two under the income tax law which expired in 1870.

The first case decided that a tax upon earnings was not a direct tax; the second, that a tax upon the business and profits of an insurance company is not a direct tax; and the third, that the tax of ten per cent. upon all State banks is not a direct tax. The reasoning and references cited in the opinions in these cases would indicate it also as the opinion of the judges that the words "direct taxes" used in the Constitution comprehend only capitation taxes and taxes on land, and perhaps taxes on personal property by general valuation and assessment of the various description possessed within the several States. This is founded upon the historical authority of Judge Patterson, one of the judges of the Supreme Court at the time the case in 3 Dallas was decided, and a member of the Convention which formed the Constitution. He is quoted in the late cases as to what were intended to be the objects of direct taxation. I oppose to this authority of Judge Patterson, as quoted in these cases, the authority of men as eminent as he, and as well qualified by their participation in the constitutional convention and in the State conventions which adopted it to be quoted as historical authority as he.

In the Virginia convention the authority to



lay direct taxes was attacked by Patrick Henry and those who acted with him as one of the most objectionable and vulnerable points in the Federal Constitution. They insisted upon substituting the requisitions upon the States, which had been resorted to under the Confederation, and Mr. Henry proposed that the Constitution should be so amended as to authorize requisitions first, and then, if not complied with, a levy of direct taxes. In the whole discussion, and in the proposed amendments, as I will hereafter show, no other taxes were thought of or spoken of than the two classes—direct taxes and the duties, imposts and excises. Other indirect taxes than these are nowhere mentioned; but, on the contrary, other direct taxes than those on lands and a capitation tax are directly asserted to be authorized, and this, too, by the advocates of the Constitution in seeking to disarm the objections of its opponents when attacking the power to levy direct taxes.

Before quoting them, however, let me suggest how improbable it is that men so careful of the phraseology used in their work as were the members of the constitutional convention would have used the term "capitation and other direct taxes" if it had been clearly understood that direct taxes were to be confined to capitation taxes and taxes upon land. If there were to be but two classes they would not have named the one and used the indefinite phrase "other direct taxes;" they would have said at once "no capitation or land tax shall be laid unless in proportion to the census," &c.

I now proceed to show how this subject was viewed by those whom we have been accustomed to call the fathers of the Constitution. When the clauses of the Constitution providing for raising a national revenue came to be considered in the Virginia convention, in the whole discussion it was taken for granted that the gradual establishment of manufactures would so diminish the duties received from imports as to render necessary a resort to other taxation, and direct taxation was the only kind spoken of. I now quote, that I may be accurate upon this subject, the debates in the Virginia convention when this matter was before them in the light I have already referred to. On page 77 of those debates Mr. Madison makes use of these words:

"Let us consider the most important of these reprobated powers: that of direct taxation is most generally objected to. With respect to the exigencies of Government there is no question but the most easy mode of providing for them will be adopted. When, therefore, direct taxes are not necessary, they will not be resorted to. It can be of little advantage to those in power to raise money in a manner oppressive to the people. To consult the conveniences of the people will cost them nothing, and in many respects will be advantageous to them. Direct taxes will only be resorted to for great purposes."

No other allusion is made here to any other than direct taxes, the duties, imposts, and excises being out of consideration at that time.

I proceed to page 220 of the same debates, and there he uses this language:

"The gentlemen who favored us with their observations on this subject seemed to have reasoned on a supposition that the General Government was confined by the paper on your table to lay general uniform taxes. Is it necessary that there should be a tax on any given article throughout the United States? It is represented to be oppressive, that the States who have slaves and make tobacco should pay taxes on these for Federal wants, when other States who have them not would escape. But does the constitution on the table admit of this? On the contrary, there is a proportion to be laid on each State according to its population. The most proper articles will be selected in each State. If one article in any State should be deficient it will be laid on another article. Our State is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds. If the taxes be not uniform, and the Representatives of some States contribute to lay a tax of which they bear no proportion, is not this principle reciprocal?"

I call attention to the fact that although upon the authority of Judge Patterson, as a member of the Convention which formed the Constitution, it was held that a tax upon carriages was not a direct tax, in this debate James Madison directly asserts that a tax upon tobacco would be a direct tax, and would be apportioned as provided for in the Constitution.

Now, sir, when you take into consideration that this law proposes to lay a tax upon all rents, when you take the language of Judge Patterson in that very case in which he says that the product of the land is to be treated as the land itself, and when you go further, and bring to your recollection the fact that in most of the agricultural States the rents of farms are paid in kind, I should like to have the distinction pointed out between the tax upon tobacco, the product of a northern or a southern plantation, and a tax upon rents which are paid in wheat or corn or any other production of the land.

I have said that I am using this as an historical authority, not as a legal argument; but the opinion, which is made the basis of all subsequent opinions, in the case in 3 Dallas, goes upon the ground that a tax upon carriages is not a direct tax, and that is based upon the historical authority of Judge Patterson, and I quote against it the authority of James Madison in these debates to show that a tax imposed on tobacco would be a direct tax, and must be apportioned under the Constitution in proportion to the census.

On page 185 Mr. Madison reasserts the same doctrine, although not exactly in the same language, but quite as strongly:

"My honorable friend over the way, Mr. Monroe, yesterday seemed to conceive, as an insuperable objection, that if land were made the particular object of taxation, it would be unjust, as it would exonerate the commercial part of the community; that if it were laid on trade, it would be unjust in discharging the land-holders; and that any exclusive selection would be unequal and unfair. If the General Government were tied down to one object, I confess

the objection would have some force in it. But if this be not the case, it can have no weight. If it should have a general power of taxation, they could select the most proper objects, and distribute the taxes in such a manner as that they should fall in a due degree on every member of the community. They will be limited to fix the proportion of each State, and they must raise it in the most convenient and satisfactory manner to the public."

I now proceed to quote language which if it had been used upon the bench would have settled this as law forever; but it can have little less weight when it is remembered that it was used in the deliberations of the Virginia convention when they were considering the adoption of the Constitution and endeavoring to remove the objections which were made to it. I read the language of John Marshall in the Virginia convention, page 168:

"It is objected that Congress will not know how to lay taxes so as to be easy and convenient for the people at large. Let us pay strict attention to this objection. If it appears to be totally without foundation the necessity of levying direct taxes will obviate what gentlemen say, nor will there be any color for refusing to grant the power. The objects of direct taxes are well understood; they are but few; what are they? Lands, slaves, stock of all kinds, and a few other articles of domestic property. Can you believe that ten men selected from all parts of the State, chosen because they know the situation of the people, will be unable to determine so as to make the tax equal on and convenient for the people at large?"

There, Mr. President, is an authority in direct opposition to the assertion in the case in 3 Dallas, that the only direct taxes intended to be authorized by the Constitution were the capitation tax and the tax upon lands, for this language is, "lands, slaves, stock of all kinds, and a few other articles of domestic property." In other words, a tax upon land, or a tax upon any personal property, would be a direct tax, and would have to be apportioned under the Constitution.

George Nicholas, on page 177, makes use of this language:

"Another argument made use of is, that ours is the largest State, and must pay in proportion to the other States. How does that appear? The proportion of taxes is fixed by the number of inhabitants, and not regulated by the extent of territory or fertility of soil. If we be wealthier in proportion than the other States, it will fall lighter upon us than upon poorer States. They must fix the taxes so that the poorest State can pay, and Virginia, being richer, will bear it easier."

Here, in considering this question of taxation, uniformity, equality was evidently in the minds of all these men who were deliberating upon the adoption of the Constitution, and in considering this very clause Mr. Nicholas says "they must fix the taxes so that the poorest State can pay, and Virginia, being richer, will bear it easier." And this, too, considering the question of taxation as between the direct tax and indirect taxes, the only ones authorized by the Constitution.

I proceed further, on page 178:

"Representatives and direct taxes shall be apportioned among the several States which may be in-

cluded within this Union, according to their respective numbers." Each State will know from its population its proportion of any general tax. As it was justly observed by the gentleman over the way, [Governor Randolph,] they cannot possibly exceed that proportion; they are limited and restrained expressly to it."

"Any general tax" is the language here; and in considering a tax of that character the language of the Constitution is considered as expressly applicable to it.

I now refer the Senate to the opinion of Mr. Grayson, on page 206:

"Gentlemen were obliged to give up the point with respect to general uniform taxes. They have the candor to acknowledge that taxes on slaves would not affect the eastern States, and that taxes on fish or potash would not affect the southern States. They are then reduced to this dilemma. In order to support this part of the system they are obliged to controvert the first maxims of representation. The best writers on this subject lay it down as a fundamental principle that he who lays a tax should bear his proportion of paying it. A tax that might with propriety be laid and with ease collected in Delaware might be highly improper in Virginia."

Governor Pendleton, on page 216, says:

"We have hitherto paid more than our share of taxes for the support of the Government, &c. But by this system we are to pay our equal ratable share only. Where is the danger of confiding in our Federal Representatives? We must choose those in whom we can put the greatest confidence. They are only to remain two years in office. Will they in that time lose all regard for the principles of honor and their character, and become abandoned prostitutes of our rights? I have no such fear. When power is in the hands of my Representatives, I care not whether they meet here or one hundred miles off.

"A gentleman [Mr. Monroe] has said that the power of direct taxation was unnecessary, because the impost and back lands would be abundantly sufficient to answer all Federal purposes. If so, what are we disputing about? I ask the gentleman who made the observation and this committee if they believe that Congress will lay direct taxes if the other funds are sufficient? It will then remain a harmless power upon paper, and do no injury."

I now proceed to make a quotation which bears not only upon the character of this as a direct tax, but also upon the inequality of the tax, and I wish to show the view which was taken by the framers of the Constitution, by those who were considering its adoption, as to the effects of a direct tax, and as to the measures which would be justified on the part of the people if there were to be any other than equal and uniform taxation under the Federal Constitution. I quote the language of Governor Randolph, pages 94, 95:

"The difficulty of justly apportioning the taxes among the States under the present system has been complained of; the rule of apportionment being the value of all lands and improvements within the State, the inequality between the rich lands of James river and the barrens of Massanutts has been thought to militate against Virginia. If taxes could be laid according to the real value, no inconvenience could follow; but from a variety of reasons this value was very difficult to be ascertained; and an error in the estimation must necessarily have been oppressive to a part of the community. But in this new constitution there is a more just and equitable rule fixed, a limitation beyond which they cannot go. Representatives and taxes go hand in hand; according to



the one will the other be regulated. The number of Representatives is determined by the number of the inhabitants; they have nothing to do but to lay taxes accordingly. I will illustrate it by a familiar example. At present, before the people are actually numbered, the number of Representatives is sixty-five; of this number Virginia has a right to send ten; consequently, she will have to pay ten parts out of sixty-five parts of any sum that may be necessary to be raised by Congress. This, sir, is the line. Can Congress go beyond the bounds prescribed in the Constitution? Has Congress a power to say that she shall pay fifteen parts out of sixty-five parts? Were they to assume such a power, it would be a usurpation so glaring that rebellion would be the immediate consequence."

Now, Mr. President, I feel at liberty to speak upon this particular view of the subject, because upon comparing the income tax paid by the several States I find that, taking the proportion of the population of my own State, making it at about four millions, we pay, perhaps, our fair proportion of the income tax of the United States, taking the whole State together. But, when I look at other States, I find that the State of New York is exactly in the position, if not in a worse position, than the one given by way of illustration by Governor Randolph, in which he says that to impose a tax of that character, so as to make a State which would be entitled, for instance, to one tenth of the representation, to pay one fifth of the taxation, would justify rebellion. The State of New York—am I right in saying—has five million people?

Mr. CONKLING. Four million six hundred thousand.

Mr. SCOTT. The State of New York, with a population of four million six hundred thousand, very little more than one tenth of the population of the United States, pays thirty-one per cent. of the income tax. With thirty-one Representatives out of two hundred and thirty-three I believe she pays very nearly a third of all the income tax of the United States. In considering this very question Governor Randolph, in the Virginia convention, citing the representation of Virginia at that time in Congress, and the proportion that would be levied upon her, says that if Congress were to undertake to impose any other rule in any general tax that would be imposed upon the United States it would be a case that would justify rebellion. I trust, sir, that no one here will advocate rebellion; I will not. I trust that when we come to look at this question fairly in the Senate the inequality, the injustice, and the demoralizing character of this tax will be so apparent that the States which are called upon to pay the least of it will be the first to come up magnanimously and say that they do not ask that others shall bear a burden which should be equally apportioned.

Now, Mr. President, I go one step further in this historical argument. Having traced the legal decisions to an historical basis, I have quoted these opinions against it. That the

light in which I have been viewing it was the light in which the people and the convention viewed it is further evident from the language of all the States which proposed amendments. I have already referred to the fact that Patrick Henry proposed that requisitions should be first made on the States, and after the requisitions were disregarded, then direct taxation might be resorted to. Now, keeping that in view, let us look at these facts. Delaware, New Jersey, Pennsylvania, and Georgia ratified unconditionally. But now turn to the journal of the Federal Convention—I will not weary the Senate by reading from it, but I refer members to it—and in that journal we find on page 403 that Massachusetts requests that "Congress do not lay direct taxes, but when the moneys arising from the impost and excise are insufficient for the public exigencies."

I have already called attention to the fact that in all these debates there were but two classes of taxation considered: first, the imposts, the duties, the excises; and second, the direct taxes. There is no allusion in any part of these debates to any other indirect tax than the imposts, duties, and excises. There were only two classes of taxation in the view of the Convention which formed the Constitution and of the conventions which adopted the Constitution—direct taxes, which Judge Marshall said embraced "lands, slaves, stock of all kinds, and a few other articles of domestic property," and the other the imposts, the duties, and the excises.

Massachusetts said this; and South Carolina, New Hampshire, Virginia, New York, North Carolina, and Rhode Island all proposed and asked similar amendments to the Constitution of the United States; so that seven States, more than a majority of all the States, took this view of the constitutional provision.

Now, Mr. President, having quoted this historical authority with regard to the question of whether this is or is not a direct tax, I now come to another view of it. If it is not a direct tax, it must be an indirect tax; and all the authorities from which I have quoted, wherever they speak of these two classes of taxes, where any particular tax is an indirect tax, apply the rule of uniformity.

In the case of *Veazie Bank vs. Fenno*, 8 Wallace, 546, Chief Justice Chase having quoted approvingly the statement of Judge Patterson in *Hylton vs. United States*, that the words "direct taxes," as used in the Constitution, comprehended only capitation taxes and taxes on land, proceeds:

"It follows necessarily that the power to tax without apportionment extends to all other objects. Taxes on other objects are included under the heads of taxes not direct, duties, imposts, and excises, and must be laid and collected by the rule of uniformity. The tax under consideration is a tax on bank circulation, and may very well be classed under the head of duties."



In *Hylton vs. United States*, 3 Dallas, 175, Judge Chase says:

"I think an annual tax on carriages for the conveyance of persons may be considered as within the power granted to Congress to lay duties. The term duty is the most comprehensive next to the general term tax, and practically in Great Britain (whence we take our general idea of taxes, duties, imposts, excises, customs, &c.) embraces taxes on stamps, tolls for passage, &c., and is not confined to taxes on importation only."

In the same case, page 176, Patterson, J., says:

"For the term tax is the genus, and includes, first, direct taxes; second, duties, imposts, and excises; third, all other classes of an indirect kind, and not within any of the classifications enumerated under the preceding heads. The question occurs, how is such tax to be laid uniformly and apportionately? The rule of uniformity will apply because it is an indirect tax, and direct taxes only are to be apportioned."

Here, then, Mr. President, we have the opinions of the judges in these cases that where the tax is not direct, then the rule of apportionment not applying the rule of uniformity must apply. I am aware it will be answered that the rule is uniform in regard to this income tax; that is, the same rate is assessed all over the United States. But there must not only be uniformity in the rate, but there must be uniformity in the mode of assessment and in the objects of taxation and in the results.

I was somewhat surprised to hear the honorable Senator from Ohio, in the opening of this debate, or in the early part of the consideration of this bill, state that if we dropped the personal income tax and continued the tax upon corporations the tax on corporations would be unconstitutional. Why? If you may tax the income which a man's body and brains make out of his profession, after he has spent most of it in maintaining his wife and children, or in educating his children at college, if you may tax the income of the mechanic, the physician, or the lawyer, and leave untaxed the millionaire alongside of him who is owning thousands of acres of unproductive land, and deducting from his other incomes the very taxes that he pays on his productive and unproductive land; if you may tax the income of the one and leave untaxed the income of the other, how is it that you cannot drop the tax upon the personal income and put it upon the income of corporations?

Mr. SHERMAN. If my friend will allow me, I did not claim that we had the power to tax incomes derived from one source and not from another. I claimed that whatever tax we imposed upon incomes must be imposed upon all incomes, whether derived from lands, salaries, or professional services, and at the same rates.

Mr. SCOTT. If that be the Senator's position, that the tax which is imposed upon incomes must be imposed upon all incomes, where is the authority for beginning with one

or two thousand dollars? You must make it uniform.

Mr. SHERMAN. I explained the ground of the exemption, which is applicable to all citizens and to all sections. That is very obvious.

Mr. SCOTT. I propose to show that it is not applicable to all citizens or all sections.

[The hour for a recess having arrived, the honorable Senator gave way at this point.]

THURSDAY, June 23, 1870.

The Senate having resumed the consideration of the same subject,

Mr. SCOTT. Mr. President, when interrupted by the arrival of the hour for a recess yesterday I had proceeded so far as to indicate, rather than to make, an argument against the constitutionality of the income tax. Passing from that, I had taken up the question of the uniformity of this income tax, arguing that if it were not a direct tax, then, being an indirect tax, under the constitutional provision it should operate with uniformity throughout the United States.

Pursuing that argument, Mr. President, I desire now to call attention to the disparity that exists in the assessment and payment of the income tax in the several States of the Union. I do not propose to go over them all; but I have made a brief table for the purpose of calling attention to the contrast between the percentage of income tax paid by a number of the States and the percentage of real and personal estate in those States, as shown by the census of 1860, the last data accessible on that point. For the purpose of doing so I have selected several of the eastern States, joining with them two of the western States and one of the Pacific States.

I take Massachusetts, New York, Pennsylvania, Ohio, Illinois, California, and New Jersey, seven States of the Union, and in these seven States the income tax paid in the year 1869 was \$25,895,597 87. Of that Massachusetts paid eleven and eighteen hundredths per cent., New York paid thirty-one and thirty-three hundredths per cent., Pennsylvania paid eleven and seventy-one hundredths per cent., Ohio paid five and ninety-five hundredths per cent., Illinois paid six and eighty-four hundredths per cent., California paid three and seventy-nine hundredths per cent., and New Jersey paid four and eighty-one hundredths per cent.; making in these States seventy-five and sixty-one hundredths per cent. of the whole income tax paid in the United States.

The whole amount of income tax paid was \$34,229,893 32; and passing from the amount of income tax thus shown to have been paid; and the per centage of each State, I proceed to look at the population and at the real and personal estate in the same States, and I find that

they had in them of real and personal estate \$6,816,629,409. Their population was 13,106,852. The total valuation of all the States was \$16,159,616,000, and the total population 31,423,442. Thus we have, in the seven States I have selected for the purpose of illustration thirty-eight per cent., or about three eighths of the value, and two fifths or about forty per cent. of the population. We have it demonstrated that thirty-eight per cent. of the value and forty per cent. of the population of the Union pay seventy-five and sixty-one hundredths per cent. of the income tax. Thus there is no uniformity upon valuation, upon population, nor upon representation—the three vital elements of taxation in a republican country. I append the table:

*Income tax, year ending June 30, 1869, as shown by the report of the Commissioner of Internal Revenue for 1869, pages 227 and 254.*

States.	Tax.	Per cent. of the whole.
Massachusetts.....	\$3,827,897 96	11.18
New York.....	10,726,769 21	31.33
Pennsylvania.....	4,010,844 87	11.71
Ohio.....	2,039,538 99	5.95
Illinois.....	2,341,573 82	6.84
California.....	1,299,141 41	3.79
New Jersey.....	1,649,831 62	4.81
Total.....	\$25,895,597 87	75.61

Total income tax in all the States and Territories, \$34,229,893 32.

The preliminary report of the eighth census shows that the population and real and personal estate in those States in 1860 were—

States.	Real and personal estate.	Population.
Massachusetts.....	\$815,237,493	1,231,066
New York.....	1,843,338,517	3,880,735
Pennsylvania.....	1,416,501,818	2,906,115
Ohio.....	1,193,893,422	2,339,511
Illinois.....	871,860,282	1,711,951
California.....	207,874,613	365,439
New Jersey.....	467,918,324	672,035
Total.....	\$6,816,629,409	13,106,852

Total valuation in all the States and Territories in 1860 was.....\$16,159,616,000  
Total population was.....31,423,442

I wish it to be borne in mind, too, that taking the whole internal revenue taxes paid by the same States, and they are in the following ratio: Massachusetts, six and forty-eight hundredths per cent.; New York, twenty-four and ninety-seven hundredths; Pennsylvania, ten and eighty-one hundredths; Ohio, eleven and twenty-six hundredths; Illinois, nine and thirteen hundredths; California, three and sixteen hundredths; New Jersey, two and sixty-one hundredths; making sixty-eight per cent. of all the internal revenue taxes that are paid in the United States. This shows its operation so far as its uniformity in the States is concerned.

Now let me come to congressional districts. I have selected twenty of them. Of these twenty districts, two in New York pay \$8,832,899 03; two in Pennsylvania pay \$1,709,

151 26; one in Illinois pays \$1,686,602 75; and one in Massachusetts, \$1,052,788 41. These six districts in the United States pay \$8,281,481 45, or very nearly one fourth of the whole \$34,000,000 of income tax. Do taxation and representation go together? And yet six districts out of two hundred and thirty-three pay very nearly one fourth of this tax. These districts are as follows:

Eighth district of New York.....	\$2,457,037 03
First district of Illinois.....	1,686,602 75
Thirty-second district of New York.....	1,375,862 00
Third district of Massachusetts.....	1,052,788 41
First district of Pennsylvania.....	911,215 76
Third district of New York.....	926,752 46
Sixth district of New York.....	899,028 23
Fourth district of Massachusetts.....	847,509 02
Second district of Pennsylvania.....	767,935 50
Fifth district of New Jersey.....	765,563 85
First district of California.....	736,038 84
Third district of Maryland.....	616,047 23
First district of Missouri.....	572,623 09
First district of Rhode Island.....	544,725 00
Second district of New York.....	483,373 13
Fourth district of Pennsylvania.....	480,637 64
Ninth district of New York.....	478,642 91
Fourteenth district of New York.....	456,064 15
Eighteenth district of Ohio.....	456,004 63
Fifteenth district of New York.....	431,235 38

Total.....\$17,006,277 01

Do not let it be said that these are the eastern States, because the table to which I have referred will demonstrate to any one who will examine it that the States which have increased most rapidly in population and in valuation since the census of 1860 have been omitted, with perhaps the single exception of California.

Here are six districts, paying this amount of tax, and the whole twenty which I have selected pay \$17,627,000; six districts paying very nearly one fourth and twenty districts paying full one half of all the income tax paid in the United States. Is there any uniformity in that? The remaining two hundred and fifteen districts pay about as much as these twenty, and the disparity in these districts, as any one who will take the trouble to examine the tables in the report of the Commissioner of Internal Revenue will find, is so great that they range from \$100,000 down to \$1,000.

Now, sir, I proceed, after having stated the result in States and districts, to a few illustrations in regard to individuals; and they are but few, but they are such that every man in his own neighborhood can point to similar ones. They are not with me imaginary cases, and I deem it better to call the attention of the Senate and the country to this mode of taxation than to indulge in quotations from political economists on the effect of this income tax. I might read here from McCulloch and from John Stuart Mill, and from all the other eminent political economists, for the purpose of showing their opinions as to the operation of an income tax; but the illustration is far better to those who will recognize their originals in their own neighborhoods, who have the taxes to pay



and who are affected by the principle involved in the laws of the country, than the opinions of political economists.

Under the old law the exemption was \$1,000. The bill before us raises the exemption to \$2,000, and reduces the rate to three per cent. But I wish to call the attention of the Senate to the fact that the feeling which has been excited by the operation of that law cannot be allayed by any anodyne administered in the shape of a proposed amendment or reduction. I propose to look at one or two cases, which anybody can recognize as not imaginary ones, under the old law.

Take a clerk in one of the Departments of the Government who has a salary of \$2,000 per year. One thousand dollars is exempt, but there his exemption ceases, because when his salary is paid to him the income tax is deducted from the remaining thousand. If he pays two or three hundred dollars a year rent for his house, there is no deduction of that or of taxes for him. Take now, living alongside of him, an owner of real-estate in this city, who occupies for his dwelling a property worth \$40,000, and who has \$40,000 at interest. There is a property which in fact is worth to the owner \$2,400 a year at six per cent. interest. Six per cent. on his \$40,000 loaned brings him \$2,400 more. He has around this city a large number of town lots that he has purchased for the purpose of speculation, holding them until their increase in value will realize to him a profit, always holding them, too, until, under the present law, the two years have gone around within which he could be required to account for the profit made upon them.

When that man who has this \$40,000 of fixed capital in his house, \$40,000 of fixed capital at interest, and perhaps \$40,000 more in unproductive real estate, comes to pay his income tax what is the result? He pays nothing on the \$2,400 a year rent which his house is worth to him, and when he comes to put down the \$2,400 he gets in interest upon the \$40,000 of money he has loaned or on Government bonds, he deducts from that the taxes paid upon the \$40,000 house in which he lives, he deducts from it the tax upon the \$40,000 of unproductive lots; and thus, by the deduction of his taxation, he brings his income down below the clerk who gets \$2,000 a year, and in most instances swallows it up altogether. Besides, if he has bought his lands on speculation, and given a bond and mortgage for the payment and paid interest for the money, believing he could pay six per cent. on the money and realize twelve on the lots in the course of two years, he deducts the six per cent. interest he has paid out from the income that he gets on his own loaned capital. Thus in fact fixed capital brings down taxation to nothing, and the labor of the body and the brain of the clerk is taxed.

Mr. MORTON. Will the Senator allow me to ask him a question?

Mr. SCOTT. Certainly.

Mr. MORTON. I should like to ask him whether his illustration proves that an income tax is wrong in principle, or simply that this law is not perfect in its character and should be corrected so as to embrace the case described?

Mr. SCOTT. I will say to my friend that if a tax can be devised bearing upon property so that it is not a direct tax within the terms of the Constitution, which would have to be apportioned, if you can devise an income tax of that kind, then I would say it would not be objectionable in principle. But devised as this one is, and as you must devise it to get clear of the constitutional provision, you cannot make a tax on property in this country that will be equitable. This has been apparent in all the discussion upon this bill. The Senator from Ohio, the chairman of the committee, in his discussion of it was so impressed with this truth that all through his speech he called it a tax on property. I remember I was struck with his illustration. He says if the property of this country would only pay enough taxes to pay the pensions to the widows and orphans made by the war he would be satisfied, showing that in his view of it this tax is a direct tax upon property. That is my answer to my friend from Indiana. If it were a tax upon property, then apportionment must necessarily be made upon population.

But, sir, I go to a second illustration. The law professes to exempt all incomes under \$1,000, and this measure professes to exempt all incomes under \$2,000, at the same time that the law imposes a tax of five per cent. upon the interest that shall be paid upon coupons on all corporate bonds; upon the dividends declared by all banks, corporations, canal, railroad, insurance companies, &c.; and I ask the attention of the Senator from Ohio to this point, in view of the enunciation which he made yesterday that there was no judicial tribunal in the land that would sustain the constitutionality of this tax, if we would take off the tax on the personal incomes and impose it upon the incomes of corporations.

Now, sir, while the law professes thus to exempt \$1,000 under the old law, and \$2,000 under this, what is its practical operation? The officers of those corporations are bound to deduct the tax when they pay the interest or dividends, and they have no means of knowing what the income of the recipient is, and can make no deduction if they did. It matters not whether it is \$20,000 or twenty dollars. Take now the large number of persons who have their annuities in bank stock, in railroad bonds, in insurance companies, where they have paid to them by the officers of those companies annually a certain sum secured for their support.



Let me mention a case which is not an imaginary one. Under this operation of the law there is a family which has its whole income of \$600 in the bonds of a corporation in my State, the North Pennsylvania Railroad Company. The State of Pennsylvania, following the example of the United States, imposed also a tax of five per cent. upon the interest upon coupons in that State which had been previously exempt. When that family present their coupons at the office of the railroad company five per cent. is taken out for the State and five per cent. United States tax, making thirty dollars paid in support of the national Government by that family whose income is only \$600. Alongside of them reside a family that have exactly the same income secured by a bond and mortgage on real estate for \$10,000. They get \$600 upon that. Of the two families realizing exactly the same income, and dependent upon those incomes for support, the one pays thirty dollars to the Government and the other pays not one cent. Call that equality of taxation! Call that uniformity of taxation! What becomes of the principle that my friend from Ohio enunciated yesterday? That I may not do him injustice in calling attention to it, I will read from the Globe the report of his speech:

"The Senator from New York seemed to suggest the keeping of an income tax on corporations and yet striking out the tax on personal income. In my judgment, under the Constitution of the United States, we should have no right to discriminate in that way. If that position be true, then we may levy an income tax solely on the income derived from United States bonds, or from railroad corporations, or any other form of investment. An income tax must be, in the language of the Constitution, general in its character, covering all incomes, from whatever source derived, of certain amounts, with proper limitations; it must be coextensive with the subject of income. If any other idea should prevail it would be in the power of a majority of Congress to aim a discriminating tax against the industry of a particular section and thus avoid the very foundation of the Constitution, which requires equal, just, and fair taxes—taxes applying to all alike. Now, to levy a tax upon a corporation, or the proceeds of a corporation, the income of a corporation, at a greater rate or greater amount than on the income of some other business, would be, in my judgment, clearly unconstitutional."

And yet here are two families, the one having an income from corporate bonds and the other having an income from bonds secured on real estate; and the tax is imposed on the one and the other is exempt.

Mr. SHERMAN. If my friend will allow me I will state that the injustice to which he refers—and indeed he cannot state it too strongly—has always been opposed and condemned by me. There is no reason in the world why an income derived from corporations ought not to enter into the general return of income, just as we now propose to allow the salaries of public officers to be. But when this subject of the income tax was up in the Senate years ago it was deemed so vitally necessary to secure the whole income derived from corporations directly

from the corporations, that the principle of justice which the Senator fairly states was overridden. And even now I may state, without violating any secrecy, that I proposed, and I should be glad if the Senate would adopt, a suggestion requiring the income of corporations to be returned as general income; but the objection was made in committee, and no doubt will be made here, that it would complicate the matter and probably defeat the collection of this portion of the income tax. But the inequality does not go to the rate. No one has ever proposed to levy a higher rate on incomes from corporations than upon personal income. The injustice which the Senator now points out only applies to the application of the exemption and not to the application of the income tax proper.

Mr. SCOTT. Having entertained those views, I am very sorry that the chairman of the Committee on Finance has not reported some measure which would grant the needed relief to this very large class of persons who do suffer. And I think it will not be much gratification to those who are compelled to pay this tax to be told that there is not a difference in the rate, when they feel that the difference between them in the rate which is imposed on them and others is just the difference between five per cent. and nothing. That is the difference between the rate which is paid by these persons in the same class. I shall have an amendment to offer which I hope will remedy this injustice, if this tax is to be continued; but only in that contingency shall I offer it.

Now, sir, in this connection I wish to read all that the Senator from Ohio said on that subject. He was interrupted by the Senator from Oregon, and replied in the following language:

"Mr. CORBETT. You exempt \$1,000 of income.

"Mr. SHERMAN. Certainly; but we exempt \$1,000 derived from all incomes. If the idea is that you can gild over this dose by repealing the tax on personal income, leaving the tax on the income from bonds of railroad or other companies and incomes from corporation stocks, Senators may as well abandon the idea; it could not be entertained in any judicial tribunal in the United States."

Well, sir, if that doctrine be true, then the discrimination to which I have called attention is just as fatal to this law as the discrimination to which his attention was called by the Senator from New York. But, sir, on this point it is alleged that this tax operates upon the rich and not upon the poor; that it is a tax paid by corporations. It is not a tax paid by corporations; and even if it were, I always distrust that it is not solid ground upon which any legislator is standing when I hear him justify any measure by an appeal either to the rich or to the poor, arraying them against each other. It always brings to my mind that favorite saying of Mirabeau, "that the Capitol is

near to the Tarpeian rock;" and I always think when we begin to look upon the effect of our legislation upon rich or upon poor, that we would be better employed in looking at the right, the justice of the principle embodied in our legislation.

The safety of the poor man in this Government is the justice of the principle embodied in all measures of legislation. If you may discriminate for him you may discriminate against him; and perhaps it will not be long, if we go on at this rate, basing our legislation upon the ground that we intend to impose the burdens of the Government upon the rich and exempt the poor from them, until some man may be found bold enough to claim that that doctrine shall be carried to its logical consequences, and that if the rich pay all the taxes taxation and representation shall go together. Is there any man here willing to advance that doctrine now? And yet the poor man who is appealed to for the purpose of imposing this tax upon others because they are rich, had better look to the ground upon which that principle of taxation shall be established. We had better trust to his intelligence and sense of justice and do right, than fear that his indignation over a just measure may be swelled into a Tarpeian rock, from which the occupants of the Capitol may be thrown.

Now, sir, to show that this tax does not operate upon the rich altogether, I wish to read a letter that I have received. I do not believe in citing letters anonymously, and I therefore give the name of the gentleman, Peter Walker. He resides in Philadelphia, and is well known to me as a gentleman of character, connected with one of the religious publication houses of that city. He is a benevolent gentleman who gives a great deal of his time in attending to the business of those who are too poor to employ agents to attend to it; and I do not know that I can place this subject in a better light than by reading his whole letter. I send it to the desk and ask the Clerk to read it.

The Chief Clerk read the following letter:

348 SOUTH FIFTEENTH STREET,  
PHILADELPHIA, January 15, 1870.

DEAR SIR: As the internal revenue laws will probably soon engage the attention of Congress, permit me to call your attention to the tax on dividends. It is a tax on income, but while its payment is credited to the rich man it is irremediably taken from the invested means of the industrious poor. I have for many years collected dividends for a few people unaccustomed to do business for themselves; and I will state their case, and every one will see that there are thousands in the same circumstances:

1. R. An aged widow, family all married, lives by passing from the house of one child to another as they are willing to entertain her. A son-in-law left her an annuity of seventy dollars a year in good stock to provide her with clothing, &c. Out of this \$3.50 is retained by the United States tax.

2. H. A widow, with one daughter aged fifteen. Sole income from bonds and stocks \$240 a year. Out of this twelve dollars is retained as United States tax.

3. E. An aged lady, all her property invested in railroad bonds, receives in yearly interest \$560, but out of this twenty-eight dollars is retained as United States tax.

4. J. An infirm lady; property invested in stocks and bonds; annual income \$600, but out of this there is retained by the United States thirty dollars.

The evil does not rest here. The State of Pennsylvania, instead of passing by an article on which the United States has levied as much as it would bear, has followed its example and placed an equal amount of tax on the same dividends. Ten per cent. is now taken from the income of people who are only able to sustain life, and some of whom are supported mainly by the charity of others. If the United States would abolish the tax on dividends Pennsylvania would again, it is probable, follow her example.

This tax does not act injuriously on interest alone. The principal of all these investments is now twenty per cent. lower in value than when I began to collect for them.

The manner of collecting this tax hides its rapacity. It is called a tax on dividends; it is retained by the companies who are wealthy and managed by wealthy men. The persons from whom it is retained are in general never seen; they are widows, orphan children, persons who are incapacitated by age or infirmity from employing their capital in active business operations, but who, by such investments, are enabled to sustain themselves without being a burden to the community. From the sums I see upon the books of the corporations I visit I feel conscious that these are the people who pay the tax on dividends, and I pray you, my dear sir, to exert your influence for their relief, and by doing so you will much gratify

Your obedient servant,

PETER WALKER.

Hon. JOHN SCOTT, Senator for Pennsylvania.

Mr. SCOTT. Now, Mr. President, this is one class of fixed incomes which the law professes to exempt, and which in reality are taxed more severely than any other class. It is a remarkable fact that the number of persons who pay this income tax is ostentatiously paraded as a reason why it should be continued, because there are so few pay it. I wish it to be borne in mind that the number embraced in the class to which that correspondent refers are not included in the two hundred and seventy thousand who paid income tax in 1869. That is only the number who paid the assessed income tax. The taxes collected by corporations are given in the gross, and therefore the aggregate number of the small stockholders who pay in the way to which Mr. Walker refers are not included in the number at all; and I am assured by those conversant with the institutions of this character in the large cities that the number of poor with an income under \$1,000 who pay the income tax in this form actually exceeds the number of the rich who are paraded as paying the tax. So that, if it comes down to numbers, there are more poor people paying the tax upon incomes under \$1,000 than there are rich men paying the tax on incomes over \$1,000. Their contributions do not amount to as much, but in number they are more. If their names were published the feeling of hostility to this tax might be better understood.

Now, sir, I proceed further. It is alleged



that this is a tax upon profits, upon realized value. This is the statement of the Commissioner of Internal Revenue. The statement of the Special Commissioner is that it is a tax upon profits. Sir, it is neither. It reaches the poor, toiling country clergyman, who is living on perhaps \$1,500 a year, or \$2,000, who is endeavoring to educate a son at college, who perhaps has to pay a large portion of his salary for the medical attendance of his family. It reaches the preacher; it reaches the teacher; it reaches the mechanic, (for there are hundreds of them with salaries over \$1,000 a year,) and is a tax upon industry, a tax upon toil; and more than that, if you look at it in its operations, it is really a tax upon the number of children that a man has. He is actually taxed upon the number of his children, because the form which is put in his hand for the purpose of returning his income, as I shall show when I come to discuss it, compels him to put into the return of his income any salary that is made by his minor children; and yet the man who simply maintains a wife without children, or a wife and one child, has the same exemption with the man who has a wife and ten children; and that, too, whether he is living in the city of New York or Washington, where \$1,000 will not go as far in maintaining them as \$500 will in the State of Ohio or Indiana. In these instances you put your tax upon men who have expended all their income, and at the end of the year have nothing left. They have expended their income in the necessary maintenance and education of their families, and then you come at the end of the year asking them for a tax on realized wealth. Sir, it is a sarcasm; and no wonder that the iron has entered deeply into the hearts of those classes who feel that they have been oppressed by this income tax.

Mr. President, this tax is onerous, it is burdensome, it is demoralizing. Let us look at it. In this great and growing country it ought to be increasing very rapidly. What are the facts? In 1866, when there was an exemption of \$600, there was collected \$60,894,135 85. In 1867, with an exemption of \$1,000, there was collected \$57,040,640 67. In 1868, with an exemption of \$1,000, it fell to \$32,027,610 78. In 1869, with the same exemption and increased efficiency in collection, there was collected \$34,239,893 38. In 1866 it was paid by 460,170 persons; in 1867, by 259,385 persons; in 1868, by about two hundred and forty thousand persons; and in 1869, I believe, by two hundred and seventy one thousand persons. If you add the class that I have referred to it will probably double the number.

But, sir, the number itself is the very best evidence of the demoralizing character and tendency of the tax. Take up the return of the Commissioner of Internal Revenue, and you will find that a tax of twenty dollars and

under was paid by one hundred and seven thousand nine hundred and sixty-seven persons. That is on an income of \$1,400, and less. Does any sane man believe, can he sit down and look at this country, from the Atlantic to the Pacific and from Maine to Florida, and say that there are only one hundred and seven thousand nine hundred and sixty-seven persons in the United States who enjoy an income not exceeding \$1,400? The very statement itself is the best evidence of the demoralizing tendency of the tax. Every man sets himself to work to cipher himself out poor, and when he sets out with that determination he generally accomplishes the result.

But, sir, the excessive rate of the tax in our country is calculated to make it more demoralizing. The rate is five per cent. Let me call attention to that for a few moments. The Year Book of 1869 estimates the British income tax at £6,900,000, equal to \$34,450,000. Our income tax for 1869, I have already stated, was \$34,671,791. In his annual report Commissioner Wells estimates the real and personal estate of Great Britain, in 1868 and 1869, at \$30,000,000,000; in the United States at \$23,400,000,000. He estimates the annual product of Great Britain at \$4,070,000,000 gross and \$2,750,000,000 net. This would give \$1,000 of principal and \$134 of gross product to each person in the British population of 30,330,000; while, taking the gross product as estimated by him in the United States, it gives \$600 in currency to each one of our estimated population of thirty-nine millions. And yet, here comes the point: with that average of \$600, gross product, to every person in our country in currency, our people pay as much income tax on \$23,000,000,000 as Great Britain does on \$30,000,000,000, and we do not include, as she does, the house rate of one and two thirds per cent.; so that our tax is beyond all proportion excessive over that of Great Britain.

Now, sir, what is the effect of this excessive taxation? Let us look at the country that is referred to in illustration and in vindication of this income tax. I send to the Clerk a statement which I have clipped from a reliable paper, giving the result of the income return of England for the year 1868-69, and giving the remarkable percentage of actual fraud which is developed by an examination of those returns. I ask the Clerk to read the short extract which I send to the desk.

The Chief Clerk read as follows:

"The income returns of England have just been submitted to Parliament for the year ending March 31, 1869. The revenue of the Government from incomes during the year ending March 31, 1868, amounted to £6,184,166, about thirty-one million dollars, or \$10,500,000 less than the revenue derived from the same source by the United States in 1868. Included in the income return of England were the assessments on 'houses' in the fiscal year 1866-67, amounting to £1,334,000. The exempted incomes in



1866-67 reached £13,572,000, on which the tax, at fourpence on the pound, or one and two thirds per cent., would have amounted to £226,199. Concerning frauds upon the revenue the report says that out of two hundred cases inquired into it was found that in eighty cases the revenue had been defrauded forty per cent. The aggregate of the taxable incomes returned by the parties themselves was £73,642, and the amount ultimately found to be correct was £111,370, being in excess of the returns by £37,728, or about one hundred and thirty per cent.

The report also says: "These deficiencies are not confined to any particular class, trade, or profession; we find it among legal practitioners, we find it in every variety of trade, and we find it in great public companies, and in firms whose business is almost a national concern, from its magnitude and world-wide reputation. We see no reason to distrust this estimate, that forty per cent. of the persons assessed had understated their incomes, and that a true return would give an addition of one hundred and thirty per cent. We beg leave to call attention to the following extract from a long list of defective returns from public companies and large joint stock associations:

No.	Return.	Assessments.
1.....	£2,000	£39,500
2.....	9,000	38,000
3.....	55,000	81,000
4.....	23,284	45,984
5.....	2,000	12,600
6.....	16,250	24,492
7.....	1,600	12,000
8.....	5,000	30,000
9.....	39,300	52,000
10.....	14,674	55,000
11.....	140,465	186,539
12.....	No return.	63,949

"The real significance of the subtraction of such a large sum, \* \* \* is best brought home to us when we remember that the exemption of one man means the extra taxation of another."

Mr. SCOTT. The purport of all those enormous frauds which are exposed by those returns is summed up in that sentence, that the significance of them consists in the fact that the honest men of the country pay the tax of the dishonest, of those who refuse to return their income, or evade the tax by fraud. Any one who will sit down and look at the interrogatories which are propounded in the forms in which our citizens are required to make their returns of income tax, will not wonder that there is an effort to evade it, and a feeling of great restiveness under this administration of the tax law. After a man has made out his whole returns, after he has gone over his books, if he has kept any, or conjured up his brain, if he has not, to make an estimate, after he has gone and counted his spoons and everything else of that character that he is required to do in order to make a return under this income tax law as it is administered, then this is the instruction to the assessor:

*Assessors should require answers to be written opposite each of these questions:*

"Had your wife any income last year?"  
 "Did any minor child of yours receive any salary last year?"

Showing, as I have said, that that is to be embraced in the income return with no credit for his maintenance.

"Have you included in this return the income of your wife, and salary received by minor children?"

Implying that the tax-payer has these incomes and has concealed them. First you ask him whether he had any income, and then if his wife had any income, and whether he had included that, and then going on as follows:

"Have you any stocks, and what are they?"

"Have you bought or sold stocks or other property?"

"Have you any United States securities?"

"Have you given or transferred to any child or children of yours, or to any other person or persons, the income, gains, or profits, or any part of the income, gains, or profits arising during the year 1869 from stocks, bonds, or other securities, or from any source whatever?"

"Is such income included in the foregoing return?"

"Have you transferred any stocks, bonds, or other securities, or any other property, or the interest or other gains or profits arising therefrom during the year 1869 for the purpose of diminishing your own taxable income, and if so when and to whom?"

"Have you kept any book account?"

"Is your income estimated, or taken from your books?"

"Have any of the deductions claimed in your return already been taken out of the amount reported as profits?"

"Did you estimate any portion of your profits in making your return for previous years?"

"Was any portion treated as worthless, and, if since paid, have you included it in this return?"

The administration of the law is based on the assumption that every man who is called upon to pay this tax is dishonest. This form has been sent out giving every man who reads it notice that he is suspected, and that notice coming from the Department will produce its legitimate results, and it has done it. Sir, I say to-day that this nation can better afford to do away with the thirty-four millions of money realized out of the income tax than it can to sow the seeds of demoralization among its people and sap that virtue which is the life of the Government itself. It is better economy to so administer our laws as to encourage virtue and uprightness rather than to lead the people into temptation. There is more wisdom in that prayer, "Lead us not into temptation," than there is in the whole income tax law from beginning to end. It is not founded on that prayer at all.

Now, Mr. President, this being the practical operations of the income tax law, it is no wonder that political economists have come to the conclusion that they have in relation to it. John Stuart Mill, in his Principles of Political Economy, page 500, says:

"The tax, therefore, on whatever principles of equity it may be imposed, is in practice unequal in one of the worst ways, falling heaviest on the most conscientious."

"It is to be feared, therefore, that the fairness which belongs to the principle of an income tax cannot be made to attach to it in practice, and that this tax, while apparently the most just of all modes of raising a revenue, is in effect more unjust than many others which are *prima facie* more objectionable. This consideration would lead us to concur in the opinion which, until of late, has usually prevailed, that direct taxes on income should be reserved as an extraordinary resource for great national emergencies, in which the necessity of a large additional revenue overrules all objections."

Again, speaking of a graduated tax, similar to the income tax, he says:

"The objection to a graduated property tax applies in an aggravated degree to the proposition of an exclusive tax on what is called 'realized property'; that is, property not forming a part of any capital engaged in business, or rather in business under the superintendence of the owner, as land, the public funds, money lent on mortgage, and shares (I presume) in joint stock companies. Except the proposal of applying a sponge to the national debt, no such palpable violation of common honesty has found sufficient support in this country during the present generation to be regarded as within the domain of discussion. It has not the palliation of a graduated property tax, that of laying the burden on those best able to bear it; for 'realized property' includes the far larger portion of the provision made for those who are unable to work, and consists in great part of extremely small fractions. I can hardly conceive a more shameful pretension than that the major part of the property of the country, that of merchants, manufacturers, farmers, and shop-keepers, should be exempted from its share of taxation; that these classes should only begin to pay their proportion after retiring from business, and if they never retire should be excused from it altogether.

"But even this does not give an adequate idea of the injustice of the proposition. The burden thus exclusively thrown on the owners of the smaller portion of the wealth of the community would not even be a burden on that class of persons in perpetuity, but would fall exclusively on those who happened to compose it when the tax was laid on. As land and those particular securities would therefore yield a smaller net income relatively to the general interest of capital and to the profits of trade, the balance would rectify itself by a permanent depreciation of those kinds of property. Future buyers would acquire land and securities at a reduction of price equivalent to the peculiar tax, which tax they would, therefore, escape from paying; while the original possessors would remain burdened with it even after parting with the property, since they would have sold their land or securities at a loss of value equivalent to the fee-simple of the tax. Its imposition would thus be tantamount to the confiscation for public uses of a percentage of their property equal to the percentage laid on their income by the tax. That such a proposition should find any favor is a striking instance of the want of conscience in matters of taxation, resulting from the absence of any fixed principles in the public mind and of any indication of a sense of justice on the subject in the general conduct of Governments. Should the scheme ever enlist a large party in its support the fact would indicate a laxity of pecuniary integrity in national affairs scarcely inferior to American repudiation."

Thus much for the opinion of an English political economist, which, however, I do not value as much as I do the experience of the men who have suffered under the administration of this law.

Now, sir, I have endeavored to show that this law is of doubtful constitutionality. I have endeavored to show that it is not uniform in its operation either on the population, on valuation, or on representation. I have undertaken to show its demoralizing effect; that it is excessive; that it is impolitic; that it is unwise. All these results have been borne by the people almost without a murmur, because they looked forward to the day of deliverance.

The Senator from Ohio took occasion to remark that there was no contract in the law which bound Congress. Of course there was no contract in the law which prevents

this Congress from exercising its power. It is not a question of power. Taxation is an attribute of sovereignty. We could not part with it if we would. We could not even for a consideration, as it has been decided in some of the States, part with the general power of taxation; and if there had been incorporated into that law a provision that parted with our power of ever reimposing the tax, of course it would not have been binding. But, sir, remembering that taxation is an attribute of sovereignty, is there any other law on the statute-book of this country, or in any other country exercising this eminent attribute of sovereignty, which contains in it an apology for the exercise, and a promise not so to exercise it again?

The authors of this law knew that it was a war tax; and when they said it was a war tax they meant a tax necessary to enable us to go on with the war, not a tax to be continued after we got through with the war. That was the sense in which it was a war tax; and in the law twice repeated is the hope held out to the people, "Pay this tax until 1870, and you shall pay it no longer." Now, sir, I am sorry to say it, but I must in candor say, that the Government committed a great indiscretion in violating that promise, and in doing it in such a way as, upon the doctrine of the Senator from Ohio, was a clear violation of the Constitution. The personal income tax expired beyond all question in 1870. The only question that could be made—and there was none in that worth making—was, whether the special tax upon dividends and upon interest continued after 1870; and if that were true, then the continuance of that tax, according to the authority of the Senator from Ohio, was unconstitutional. But with that very grave doubt resting upon it, notwithstanding the promise to the people that the income tax should cease in 1870, the Government has gone on and has collected the tax upon salaries and dividends, and are now in the courts awaiting adjudication on the question whether they had a right to do so or not.

Mr. CONKLING. You mean the executive department.

Mr. SCOTT. I mean, of course, that part of the Government intrusted with the administration of the law. They did it honestly, I have no doubt. They felt that there was a necessity for revenue, and they desired to go on with it. But it would have been better for the Government if that law had been kept literally with the people, and the question of its continuance had been left to be settled by the popular voice.

Now, sir, these features of the law to which I have called attention have made the people restive. There is another, to which I merely advert, namely, the clear violation of the Constitution in not exempting the salaries of

United States judges and the President of the United States. The Constitution provides that their salaries shall not be diminished during their continuance in office. If we can tax them five per cent. we can tax them twenty, and thus take away their salaries and destroy the independence of the judiciary. All this is being violated. The judiciary, to their honor be it said, have never sent up a case to be tried. The people have paid this tax, and now that the promised day of deliverance has come they demand fulfillment of that promise.

Has there been a petition presented—if so, I have not heard it—for the reimposition of the income tax? I have heard many of them presented against its reimposition. I have presented many of them myself, though I do not know why it is that the reports of the Associated Press, as a general rule, do not contain the presentation of these petitions, especially when they come from Philadelphia. I do not know why that is; but I have presented many of them; and from the rural counties of my Commonwealth I have received very many letters, all asking me that this tax shall be removed, while I have not received one for its reimposition. This, then, is the demand of the people.

I had intended to say something about it not being necessary to reimpose the tax; but this bill will bring that question up in other aspects, and I refrain from trespassing further on the time of the Senate.

Mr. President, I have made these remarks, not for the purpose of occupying any space in the Congressional Globe, but because in honesty and in conscience I believe that this Government cannot afford to reimpose this income tax. We must keep faith with the people. They expect us to keep faith with them; and it is a gratifying fact to know that we can keep faith with them, and still keep on paying at least \$50,000,000 a year of the national debt without this income tax. I know that the tax-gatherer, and it has always been so from the day when the Saviour was reproached for sitting down with publicans and sinners—the tax-gatherer has never been welcome.

But, sir, there are numerous forms of taxes which will be uniform, which will be equal, which will bear on property; and again I say that I protest against any system of taxation which is at war with that principle we have been taught to revere as the foundation-stone upon which this Republic was built—that taxation and representation should go together. I protest against any law containing a principle which, carried to its logical results, will justify any man in saying that those who pay the largest amount of taxes should claim the largest amount of the representation of the country. These views I honestly entertain, and I present them, hoping that the sense of the Senate will be that this income tax can be dispensed with and must be abolished.











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Protection of Life, etc., at the South.

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SPEECH

OF

HON. JOHN SCOTT,

OF PENNSYLVANIA,

DELIVERED

IN THE SENATE OF THE UNITED STATES,

MARCH 22 AND 23, 1871.

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WASHINGTON:  
F. & J. RIVES & GEO. A. BAILEY,  
REPORTERS AND PRINTERS OF THE DEBATES OF CONGRESS.  
1871.

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## Protection of Life, etc., at the South.

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The Senate having under consideration the following resolution submitted by Mr. SHERMAN:

*Resolved*, That as organized bands of lawless and desperate men, mainly composed of soldiers of the late rebel armies, armed, disciplined, and disguised, and bound by oaths and secret obligations, are proven to exist in the State of North Carolina, and have, by force, terror, and violence, defied civil authority in that State, and by organized perjury have rendered the courts powerless to punish the crimes they have committed, thus overthrowing the safety of person and property, and the rights which are the primary basis of civil government, and which are guarantied by the Constitution of the United States to all its citizens; and as there is good reason to believe that similar organizations exist and have produced similar results in many parts of the late insurrectionary States; therefore, the Judiciary Committee is instructed to report a bill or bills to enable the President and the courts of the United States to execute the laws, punish and prevent such organized violence, and secure to all citizens the rights so guarantied to them—

Mr. SCOTT said:

Mr. PRESIDENT: This resolution presents several questions; first, do these bands of lawless men exist; second, have they defied civil authority and overthrown the rights of person and of property; and, third, should there be legislation to preserve and protect such rights, and to punish and prevent such crimes?

These questions have, to some extent, lately been the subject of inquiry as to the State of North Carolina. A report has been made from the select committee of the Senate, and the views of the minority of that committee have also been submitted to the Senate and to the country.

It was my intention, Mr. President, to permit those reports and the testimony which accompanied them to go forth to the country and not to say one additional word upon that subject; I preferred to let those reports and

the testimony accompanying them be the subject of discussion by other Senators; and I would have adhered to that intention had it not been for the very long, elaborate, and able speech of one of my colleagues on the committee, the Senator from Delaware, [Mr. BAYARD.] That speech has imposed upon me, as a member of that committee, the duty, not so much of replying to the speech, as of taking up the general subject that is involved in these reports.

I desire to call attention, in the first place, to the fact that party feeling was necessarily involved in the investigation ordered by the resolution under which that committee was appointed. I may further be permitted to say that if I had consulted my own feelings, I never would have been the chairman or a member of the committee. The action of this body, of its Presiding Officer, and the counsel of friends upon the floor, whose opinions I could not disregard, imposed upon me the duty of acting as the chairman of that committee. If I know my own heart, in unwillingly accepting that position it was my desire thoroughly and impartially to investigate the questions that were presented, and I entered upon the discharge of the duty with a determination so to do.

I am somewhat accustomed to the censure that is likely to be visited upon any one who undertakes to investigate a question of this character, involving party feeling; and I entered upon that duty expecting to meet the criticisms which would naturally follow if there should be a report implicating a political party. I entered upon it, not claiming any exemption from the common infirmities of men, and not expecting to escape partisan criticism, even.



if I did not deserve it. While I concede to my colleagues of the minority upon that committee the same desire to impartially investigate and report, I must now exercise the same privilege of criticising the conclusions at which they have arrived. I do it, sir, not for the purpose of stirring up partisan feeling, not for the purpose of increasing any excitement that may exist at the South, but for the purpose, if possible, of ascertaining the actual evil existing and its causes, so that we may be aided in judging what is its true remedy. Feeling thus, I take up the report of the minority of the committee, and call the attention of the Senate to its temper. I first read from page 3, where, after complaining that the inquiry is unwarranted, the assertion is made that "this investigation is an attack on North Carolina and upon her fidelity to the Union and its laws." I must deny that assertion; there is no attack made upon the State of North Carolina.

The inquiry directed is, whether outrages exist in the southern States; whether person and property are secure in those States; and the fact that the committee saw proper first to commence its investigations with North Carolina, the State which lies nearest the capital, in which disturbances were alleged to exist, cannot be construed into an attack upon the fidelity of that State to the Union or to the laws. It is an inquiry, not as to whether the State is faithful to the Union, but as to whether lawless bands of its citizens have disregarded the obligations that are due to humanity, and violated the right of citizens of the United States.

I come next to consider the charge which is made against the Senate of the United States for entering into this inquiry. What is it? The minority say:

"But all this is manifestly the result of a plan 'cut and dried' by a conspiracy formed of disappointed politicians who have lost the confidence of their people, and have been cast out of office by the almost unanimous voice of a betrayed and injured constituency."

Stating, then, that Governor Holden is the head of this conspiracy, they go on to say:

"The voice of the people of North Carolina at the last elections declared their opposition to him and his party, and his last and desperate resort is to inflame the party passions of Congress, and induce an exercise of unlawful power in his behalf. In furtherance of this scheme the present measure was instituted and this committee raised."

Thus the charge is made that Governor Holden, as the head of a conspiracy, seeks perpetuation of his power against the wishes of the people, and that the Senate lends itself to this scheme by instituting this inquiry. Then follows an attack upon a number of the witnesses who have been called, speaking of one of them as "corrupt," two of them as "perjured;" and then, that I may show clearly

the animus of this minority report, I call attention to what I believe will have to find its parallel only in some of the inferior courts of the country, and not in any deliberate document heretofore penned and submitted to the Senate of the United States. There was a man called before that committee named W. R. Albright. He is a determined man; a man who by his physiognomy and his manner would impress any one who listened to his testimony with the idea that it was dangerous to come in contact with him when he knew he was right and you combated the right. He had the misfortune to be crossed in love, and as a consequence he was two months in a lunatic asylum. He had another misfortune: that when he came into the world there was a red mark on his forehead, a birth-mark. Now, Mr. President, will it be believed that that man, elected mayor of the town in which he lives, the witnesses testifying to the fact that he is a respectable man, is held up as unworthy of belief because he was in a lunatic asylum, and that the infirmity stamped upon him by nature is dragged before the country and he is spoken of as the "red-eyed" Albright? I advert to this for the purpose of showing that there has been a temper in writing this report that can hardly be styled a judicial temper.

The next witness who is spoken of is a man named Boyd, and they say we rely upon him to prove the condition of society in North Carolina. Not at all. Upon page 8 of the minority report that statement is made, but by turning to the report of the majority it will be found that Mr. Boyd is referred to for the purpose of proving the character, the designs, and the mode of operations of the Ku Klux organization. But I pass that over for the present. I shall have something to say on that subject before I get through.

Then follows a general charge on page 8 against all the witnesses who have been called. They say this:

"Then follow three or four editors of Radical newspapers, and with them State officers, judges, solicitors, sheriffs, and constables, all apprehensive of the constitutional convention which shall deprive them of their salaried offices or party spoils, each man speaking more or less vehemently in his own immediate interest, but not one testifying facts, within his own knowledge, tending to prove North Carolina to be less safe as a place of residence than any portion of the Union lying north of her boundaries."

Mr. BLAIR. Will the Senator permit me to interrupt him for one moment?

Mr. SCOTT. For a question, not for a speech.

Mr. BLAIR. Not for a question, but for an explanation. I was occupied at the moment the Senator was making his comments as to Albright, and I did not hear what he said. A gentleman was speaking to me at the time. I believe he spoke of the minority report calling

one of the Albrights "red-eyed Bill Albright." The witness told that himself, in order to distinguish himself from another Albright of the same name. He speaks of himself as "red-eyed Bill Albright." That is his own designation.

Mr. SCOTT. I will read the paragraph, so that there shall be no mistake about it:

"He was arrested by Kirk, under Holden's orders, and by him and Holden threatened with trial by military commission, with Albright (the 'red-eyed') president, and Bergen judge advocate."

It was not to designate Albright at all; but they are speaking of another man who was to be arrested and brought before a court-martial, of which Albright, the "red eyed," was to be president.

Mr. BAYARD. I suppose the honorable Senator can scarcely object to the witness being designated by his own chosen appellation. He has called himself so in his testimony. If the Senator desires to see the precise place I can find it for him in an instant.

Mr. SCOTT. I understand all about him. Calling attention to this seems to render both of my associates on the committee somewhat sensitive. I did not suppose it was likely to do so. I will turn to what they have said about this man, as I wish to get at the animus of this minority report.

Mr. BAYARD. On what page?

Mr. SCOTT. I will give you the benefit of the whole of it. On page 6 there is a statement about Albright. It was not necessary on page 8 to designate him as "red-eyed," for on page 6 of their report the minority say:

"Following Kirk, Bergen, and Holden, jr., we have William R. Albright, commissioned a brigadier general by Holden, 'a vindictive, violent, unscrupulous man,' as he is termed by his neighbors, whose excitability of temperament is proven no less by his own testimony than the fact of his being the inmate of a lunatic asylum during a large portion of the time embraced in the inquiry of the committee."

Surely this was designation marked enough.

The minority say he was in the lunatic asylum "during a large portion of the time embraced in the inquiry of the committee." That time is more than two years, and if the Senator wishes the reference, I will give him the page of the testimony where the witness who said that Albright was in the lunatic asylum said he was there for two months, and gave the cause of his being there. I do not wish now, in the outset of this discussion, to go into an examination of the witnesses. I will not be diverted to that, and I do not wish to be interrupted further than courtesy requires that I should be. I am trying to show the animus of this report, which starts out with quoting two misfortunes visited upon one of the witnesses called, which he could not avoid, for the purpose of bringing him into obloquy and ridicule before the nation.

Now, sir, let me proceed with this subject.

After the remarks charging Boyd with bribery and corruption, and the general charge against editors, &c., the report proceeds:

"We were not aware of the intention of the majority of the committee to make a report until the meeting of the committee on Wednesday morning, when it was read for the first time and adopted; and many witnesses then in attendance were discharged. It is a matter of serious surprise and regret that the majority of the committee, upon the testimony of witnesses destitute of character, and against the evidence of men of the highest reputation in the State of North Carolina, have come to the conclusion that it is necessary for Congress to intervene to prevent anarchy in that State."

I deem it my duty here to call attention, as this is a matter of complaint against the committee, and may be considered a matter of complaint against me, to facts which my colleagues on the committee will hardly dispute. As to the statement that they were surprised that the report should be submitted on Wednesday morning, the Senator from Delaware [Mr. BAYARD] was not present; but the Senator from Missouri [Mr. BLAIR] was when on Tuesday morning, the first meeting of the committee after the adjournment on Saturday, the notice was given that the report would be submitted on Wednesday morning.

Mr. BLAIR. That is not according to my recollection. I have no doubt, as the Senator from Pennsylvania says so, that he made the statement; but I have no recollection of it whatever. All I recollect about it is that the Senator spoke of the authority to report at any time; but I had no notice to put me on my guard at all.

Mr. SCOTT. I have a very distinct recollection, but I do not wish to raise a question of veracity here, that on Tuesday morning, as the House had passed a resolution fixing Wednesday for adjournment, and we had notice of that on Saturday, at the very first meeting I stated that, as the existence of the committee terminated with this session of Congress, I would submit a report on the next morning. I had commenced the report as soon as that adjournment resolution passed. That, however, is a small matter.

In another part of the report, and I wish to take notice of it now, a complaint is made, that as the witnesses were then dismissed there was no opportunity given to meet the charges that were made against the people of North Carolina. I was somewhat surprised at this, for in my effort to do what I thought was fair in the investigations of this committee I stated to the gentlemen of the minority that the witnesses whom they deemed to be important should be designated by themselves, and that to the extent of my power as chairman they should be brought here. I have here, and I have only looked at it since there seems to have been complaint made on the subject in the Senate, the list of witnesses furnished to



me by the minority of the committee; a list of twenty-one, with one additional name furnished by the Senator from Missouri, every one of whom was subpoenaed. Of the twenty-two, sixteen have been examined. One I know did not report. As to four of the others I do not know whether they ever reported or not.

In addition to that, as this charge has been made, I have taken the trouble of looking at the testimony, and I find that taking the witnesses who were subpoenaed upon the part of the minority, they cover one hundred and sixty-five pages of testimony out of four hundred and twenty-three, and throwing out the members of the Ku Klux Klan, the witnesses who were subpoenaed on the other side cover the same number of pages, one hundred and sixty-five. The balance is taken up by the six members of the Ku Klux Klan.

Mr. THURMAN. How many by common informers?

Mr. SCOTT. Ah! I will come to the "common informers" directly. It would have been well for this country if there had been men whose consciences had goaded them to become common informers before they stained the soil of North Carolina with blood as they have done. It is only another evidence of the spirit that is manifested toward the exposure of this organization when men who do become informers are to be hunted down at home and pursued when they come to give their testimony in obedience to the mandates of Congress.

Mr. BLAIR. And sent to Pernambuco.

Mr. SCOTT. I know of no member of the Ku Klux Klan who has been sent to Pernambuco.

The statement is then made that there is no testimony to show that North Carolina is less secure as a place of residence than any State north of North Carolina. Now, sir, I state the fact, and it is important that I should do so, that with the exception of the crimes that are shown to have been committed by the members of the Ku Klux Klan there is no difference of opinion between the minority and the majority reports on that subject. So far as we have been able to examine the State of North Carolina we find, and we have so expressly stated in the report, that as to all other offenses than those committed by the Ku Klux Klan life and property are as secure in North Carolina as they are in Pennsylvania and Massachusetts. I do not intend that the issue shall be widened here for the purpose of enabling any one to claim sympathy for North Carolina for an attack upon her institutions. The question is as to the existence, the operations, and the impunity of the Ku Klux Klan in North Carolina. Otherwise we agree. I agree that in North Carolina life and property are as secure as in any other State except when they are threatened and destroyed by the mem-

bers of this Klan, and that when others do commit crimes against the laws they can be punished as effectually there as in other States.

I must notice here a remarkable statement made by my friend from Delaware. I was astonished that a gentleman usually so acute as he is, and so logical, should in one part of his argument have said to the Senate that the imbecility, the inefficiency, and the corruption of Governor Holden's administration was so great in all its departments, including the judiciary, that there was no protection for life and property, and people had to resort to violence for the purpose of redressing their wrongs, and then, in his argument and in his report, saying to the country that life and property were as secure there as they were in any part of the United States. When the assault was made on the administration of Governor Holden, then there was no protection for life and property in that State; but when it was necessary to screen the Ku Klux, then life and property could be protected in the courts there as well as any place else. That will be something for some of the Senator's colleagues to reconcile when they follow him.

I repeat, the report of the majority does find that in that State, with this exception, life and property are secure, and instead of asserting any unwarranted conclusion, we submit to the country upon the testimony reported whether they are secure or not as against the offenses of the Ku Klux Klan. There I intended to submit it, had it not been that I am compelled by my position on this committee not to repeat the report, but to bring out more clearly, if I can, the operations and the existence of this nefarious order.

I need not go on to show that these disorders do exist. The Senators of the minority agree that disorders have existed in North Carolina, and they have assigned three causes for them, with all of which I intend to deal before I close my remarks. What are those causes? First, on pages 8 and 9 of the minority report they charge that the "unconstitutional legislation of Congress" is the cause of these disorders. I do not wish to misrepresent them, and I read their words:

"The undersigned believe that all the disorders which exist in that State were created by the unjustifiable and unconstitutional legislation of Congress in regard to its government."

I wish that borne in mind. Second, the allegation is made that the establishment of Union Leagues led to these disorders; and third, the financial condition of the State as brought about by the administration of Governor Holden. I come to the concluding sentences of the report in which the minority of the committee prefer an indictment against the Congress of the United States, which is as bold as that which this startling testimony makes out



against the Ku Klux Klan itself. They say the legislation of Congress is unconstitutional; that that unconstitutional legislation has produced these disorders; that it has produced the financial embarrassment of North Carolina; and that this is an unjustifiable partisan attempt to drag that Commonwealth out of the power of the Democratic party because of that failure. Having said this, what do they say with regard to the people of North Carolina?

"To any fair-minded man we confidently commit the proofs contained in the testimony now presented by the committee, and aver that in the face of such wrongs as have been inflicted upon an unfortunate and crushed people by the rulers placed over them—not by their own consent, but by the exercise of despotic powers by the Congress of the United States—no example of equal submissiveness and patient endurance can be found in history as is now presented by the people of the State of North Carolina."

That is the allegation with regard to the people. Then, speaking of the State administration, they say:

"They have appealed to popular election, and have been rejected with something near unanimity by every tax-payer in the State. And now Congress is asked to step in and force North Carolina down again under the feet of her Radical masters; and we fear that Congress will attempt to do this unwise and wicked thing."

"Will the people of the North (free as yet) see this thing done and sustain its promoters? We hope not, we pray not! When will the men now in power learn the truth of what the great statesman of our century said so wisely and well, when similar attempts were made to govern British India?"

And then this indictment is brought against the men now in power. I wish it to be heard. The action of the Congress of the United States toward the State of North Carolina is described to the American people by the minority of the committee in this language:

"It is the nature of tyranny and rapacity never to learn moderation from the ill success of first oppressions. On the contrary, all men thinking highly of the methods dictated by their nature attribute the frustration of their desires to the want of sufficient rigor. Then they redouble the efforts of their impotent cruelty, which producing, as they must produce, new disappointments, they grow irritated against the objects of their rapacity; and their rage, fury, and malice (implacable because unprovoked) recruiting and reinforcing their avarice, their vices are no longer human. From cruel men they are transformed into savage beasts, with no other vestiges of reason left but what serves to furnish the inventions and refinements of ferocious subtlety for purposes of which beasts are incapable and at which fiends would blush."

That is the language in which the men now in power are described by the minority of the committee, who strive to diminish the number of the crimes of the Ku Klux Klan, and make a crusade against every man who exposes them as a common informer. Who are the fiends at which humanity would blush? I leave the people to determine after they shall have examined this testimony and after they

see of what this organization is composed and how it carries out its purposes.

[At this point the honorable Senator yielded to a motion for an executive session.]

THURSDAY, *March 23, 1871.*

The Senate resumed the consideration of the same subject.

Mr. SCOTT. Mr. President, I had proceeded so far yesterday as to comment upon those features of the views of the minority which I considered demanded my notice. Having stated that there were three questions involved in this resolution, I consider together the first two, namely: First, do these bands of lawless men exist? Second, have they defied civil authority and overturned the rights of person and property? for they are so intimately blended that I cannot consider the one without the other. I come back, then, to the report of the minority, for the purpose of getting common ground upon which we can stand as to the time during which these disorders have been committed. For that purpose I read from the views of the minority, on page 9. They say, speaking of important facts that are disclosed:

"The first is that the State of North Carolina enjoyed comparative peace and quiet after the war closed, and until the reconstruction acts of Congress were put in force by the Army; and the second is, that since the State government thrust upon them by Congress has passed under the control of the people of the State, in the election of August, 1870, peace and quiet and good order have again assumed their sway."

"The period intervening, marking the epoch of reconstruction, from August, 1868, to August, 1870, also marks the period of disturbance, disorder, and crime; and it may be said, and the evidence proves, that during this time the State government of North Carolina was a conspiracy against the property, the peace, and the political liberties of the people."

I read the whole sentence, so that there can be no charge of detaching one portion from another. Now, sir, three assertions are made in that extract: first, that from the close of the war until the inauguration of the State government under the reconstruction acts peace and quiet prevailed in North Carolina; second, that from August, 1868, the inauguration of the State government under the reconstruction acts, until August, 1870, the time of the late election, there were disorders; third, that from August, 1870, until the present time those disorders have ceased. To the last allegation I do not agree, and the instances are given in the majority report, which contradict it. I do not propose to repeat them. But the other two allegations are important in considering this question. The first allegation disposes of the idea that the disorders in North Carolina have anything to do with the presence of a large number of disbanded soldiery. It can-

not be alleged that these are the consequences of the withdrawal of discipline, and of the demoralization which follows service in the army. That idea is dispelled by the report of the minority, for with all the disbanded soldiers that were present in North Carolina from 1865 until August, 1868, they say there was no disorder.

Then we naturally come to inquire what has caused the disorder from August, 1868, until August, 1870. Now, sir, we are to take into consideration the feelings, the views, and the situation of the people among whom these disorders occurred. We are to remember that before the war North Carolina was a slaveholding State; that the wealth of her people consisted principally in their slaves and in their lands; that the importance of its slaveholding people depended upon that species of property; their influence politically and their position in society depended upon it. At the end of the rebellion their slaves were free, the means of cultivating their lands were gone, their influence to a great extent was broken. The government which they had rushed into rebellion to sustain had disappeared as a phantom. The Government which they had attacked and sought to destroy had asserted its supremacy and its power. The State government to which they had clung was prostrate in the dust; and we cannot but realize that these people did not entertain the most friendly feelings toward the Government which had frustrated all their designs. I speak of that portion of the people of North Carolina who had gone into the rebellion *con amore*.

Now, sir, with these facts before us, and making due allowance for the feelings that were entertained by the people of North Carolina, before I come down to August, 1868, when this disorder commenced, let me call attention to a few intervening historical facts as bearing upon the commencement of disorder.

On the 29th of May, 1865, W. W. Holden was appointed provisional governor of that State. On the 21st of September, a convention was elected. On the 2d of October that convention met. On the 12th it tabled a proposition prohibiting the payment of the war debt incurred during the rebellion. On the 18th the President of the United States said to them that that would not do; that there must be no such provision as would recognize the validity of the war debt. On the 19th they prohibited its payment after this warning from the Executive. On the 9th of December Governor Worth was elected under the constitution then formed, and on the 15th of the month he was qualified as Governor of North Carolina.

On the 10th of March, 1866, under the government then formed, they passed an act concerning negroes, making distinctions in regard

to them as witnesses, imposing the penalty of death upon a negro when found guilty of a certain crime, but a milder penalty upon a white man, in consequence, I suppose, of his superior intelligence and education; and making a distinction as to apprentices and contracts. On the 4th of December, 1866, they rejected the fourteenth amendment to the Constitution.

Now, Mr. President, after all this had been done, after the feelings of the people in North Carolina with reference to the new state of things had been expressed by these conventions, by this legislation, and by the rejection of the fourteenth amendment, Congress stepped in, repudiated what had been done under executive dictation, and passed the reconstruction acts in March, 1867. Within three weeks after they were passed a Republican convention of the people of North Carolina accepted the reconstruction act and organized their party upon the basis of that acceptance; and this is an important feature in view of what is now alleged as the cause of the disorders in that State. On the 23d of April, 1868, under the reconstruction acts, they adopted a new constitution. On the 25th of June the general law was passed which admitted North Carolina and other States to representation. On the 3d of July they adopted the fourteenth amendment, and on the 20th of July that amendment was declared adopted by three-fourths of the States.

Now, sir, there are several things to be observed to get at the temper of the people in consequence of these successive acts. In the first place, they wished, until prevented from doing so, to pay the war debt of the rebellion. In the second place, they wished to discriminate against the negro in his civil rights and to deny him all political rights, for they rejected the fourteenth amendment.

Then we come to the 3d day of July, 1868, the day when the people of North Carolina adopted the fourteenth amendment, the Republican party of that State having previously accepted the reconstruction acts. Now, sir, I come to a period when not only the people of North Carolina, but the people of the United States divided upon this question of the reconstruction acts, whether they were constitutional; whether, after these States had rebelled, attempted to destroy the Government and erected new State governments, Congress had the power of imposing the terms upon which they should be again admitted to representation. That I may do no one any injustice as to the position that was taken upon that question, I will read first from a letter of a distinguished member of the Democratic party, now a Senator upon this floor, what he said upon that question as an introduction to the



crystallization of the same sentiments adopted in the Democratic platform of the 4th of July, 1868. I read from a letter under date of June, 30, 1868, by the present Senator from Missouri, [Mr. BLAIR,] the gentleman to whom I refer :

"We cannot, therefore, undo the Radical plan of reconstruction by congressional action; the Senate will continue a bar to its repeal. Must we submit to it? How can it be overthrown? It can only be overthrown by the authority of the Executive, who is sworn to maintain the Constitution, and who will fail to do his duty if he allows the Constitution to perish under a series of congressional enactments which are in palpable violation of its fundamental principles." \* \* \* \* \*

"There is but one way to restore the Government and the Constitution, and that is for the President-elect to declare these acts null and void, compel the Army to undo its usurpations at the South, disperse the carpet-bag State governments, allow the white people to reorganize their own governments and elect Senators and Representatives. The House of Representatives will contain a majority of Democrats from the North, and they will admit the Representatives elected by the white people of the South. and, with the coöperation of the President, it will not be difficult to compel the Senate to submit once more to the obligations of the Constitution. It will not be able to withstand the public judgment, if distinctly invoked and clearly expressed on this fundamental issue, and it is the sure way to avoid all future strife to put the issue plainly to the country." \* \* \* \* \*

"We must restore the Constitution before we can restore the finances, and to do this we must have a President who will execute the will of the people by trampling into dust the usurpations of Congress known as the reconstruction acts."

That, sir, is of the date of June 30, 1868, which is approaching August, the time when they say the disorders began. One week later, on the 4th of July, these sentiments were consolidated into this resolve :

"And that we regard the reconstruction acts, so called, of Congress, as such, as usurpations and unconstitutional, revolutionary, and void."

This was the platform adopted by the Democratic party in 1868, on the 4th of July. I read it, not for the purpose of entering into a discussion of it, but to get clearly at what that position was, for, much as I differ with gentlemen on these political questions, I always admire them when they frankly state their opinions and boldly adhere to them. Thus we have the position that the reconstruction acts were null and void and that they were to be overthrown. Then, sir, having got down to the 4th of July, 1868, I progress to August, the date when it is said these disorders began in North Carolina; and that I may get their inception as nearly as I can, I refer to the testimony that is taken in this case, and I show that Ku Klux disorders did begin in August, 1868, and then I shall proceed to show that the object of that Ku Klux organization was identical with the platform of July 4, 1868. On page 191 of this testimony, in the evidence given by George Laws, after speaking about

an outrage which was committed in the county in which he lives, (Orange county,) he says :

"Some people deny their being Ku Klux, but I think that where there was so much smoke there must have been some fire. There is none in existence there now, and I do not think there has been any for the last eighteen months. Things got better after awhile. The reason why I can speak positively about an organization of that kind is that in August, 1868, a company came to our town, forced open the jail, and look out two negroes."

This was the very time which the minority report fixes as the commencement of these disorders. Now, sir, I take up this organization for the purpose of showing not only that it was a part of the Democratic party, that every member who entered its portals had to be a member of that organization, but the avowed purpose with which its members were taken into it was to overthrow the reconstruction acts. There have been before the committee six members of that organization; and that the idea thrown out by the Senator from Delaware may be contrasted with the actual fact, the idea that none but cowards and poltroons and the worst order of society were in that organization, let me show who they were. Jacob Long and James E. Boyd, both members of the bar of Alamance county; Willeford—I have forgotten his first name—a carpenter; W. S. Bradshaw, a farmer; Lucian Murray, a merchant; and George W. Rodgers, a farmer. Thus we have two lawyers, one mechanic, one merchant, and two farmers in this organization; and when it is remembered that all these depredations are committed at night, that all its members are equipped with horses, accoutrements, and arms, we must see that it is not, as the Senator from Delaware would impress upon the public, the cowardly rabble who go about committing these lawless depredations; or if they are the instruments they have men of intelligence, property, and influence to sustain and encourage them.

But, again, that I may show not only the time when this organization commenced, but how long it continued its operations, I take from the testimony the date at which each one of these six members was initiated before I proceed to its objects. Long, the commander of the organization in Alamance county, entered it in October, 1868. Boyd was initiated in November, 1868; Willeford in April, 1869; Bradshaw in the spring of 1869; Murray in December, 1869; and Rodgers in the fall of 1868.

Now, sir, having shown that it commenced in August, 1868, and that it ran down to as late as December, 1869, I go on to show what was its purpose as compared with the letter of the Senator from Missouri and the platform which I have read. I take up the witnesses again in their order and show what they considered was its purpose. The first one, Mr.



Boyd, on page 19 of the testimony, says this:

*Question.* What is your knowledge of the object and extent of this organization throughout the State?

*Answer.* I can only state from hearsay, what I have heard from members of the organization. The number of the members of the organization is supposed to be forty thousand. Their object was the overthrow of the reconstruction policy of Congress and the disfranchisement of the negro. There are two other organizations besides that of the White Brotherhood, as I said before.

That refers to the Constitutional Union Guards. We came afterward to the Invisible Empire. There is the statement which shows the object of the organization to have been the overthrow of the reconstruction acts and the disfranchisement of the negro. Long, on page 258, makes this statement:

*Question.* Then the membership, so far as you know, was entirely confined to the Democratic or Conservative party?

*Answer.* Yes, sir.

On page 263 he says:

After that I was initiated in the Constitutional Union Guards; it was in December, I think, 1869.

Showing that the White Brotherhood, for some reason, was abandoned, and the other substituted in its stead in 1869.

*Question.* And you believe their purposes were about the same as the White Brotherhood?

*Answer.* Yes, sir; except it was more rigid in its discipline.

On page 262 he says, after speaking of the Constitutional Union Guards:

*Question.* Had each county organization a separate commander?

*Answer.* That was the way I understood it. I think the Constitutional Union Guards had a central commander to whom they reported.

This to show the extent of the organization. I come now to an important feature of this man's testimony. I see proper to take it up while I am considering the objects of the organization, as it discloses the fearful state of demoralization introduced into that community by its influence. On page 259 of this testimony this man gives this statement:

*Question.* When was Outlaw hung?

*Answer.* In February, 1870.

*Question.* At that time you were not connected with the order?

*Answer.* I was not.

*Question.* Were you in Graham at the time?

*Answer.* Yes, sir.

*Question.* Have you any knowledge of the men who committed that outrage?

*Answer.* No, sir; I know nothing about it.

*Question.* Why did your connection with the order cease? Was it voluntary, or did they depose you and elect another?

*Answer.* I disbanded the thing voluntarily, and from that day I never knew anything more of their operations.

*Question.* Was there any dissatisfaction with your administration of the affairs?

*Answer.* Well, sir, I have heard that there was some. I do not know that it was so.

*Question.* What was the cause?

*Answer.* The simple fact that I was opposed to their proceedings.

*Question.* Because you would not permit acts of violence to be consummated?

*Answer.* That was the reason I disbanded them.

I will show when I come to consider one of the outrages that are proven by this testimony that it was communicated to this man that the camp had agreed to murder Caswell Holt; that he undertook to dissuade them from doing so; that in consequence of that they lost their confidence in him, and that it became necessary for him to retire from the commandship of that county because they wanted a more convenient and more pliable instrument for the purpose of carrying out their designs.

I quote now the testimony of a man named Willeford, to show the purpose of the organization:

*Question.* What was its object, and how did it carry out its object?

*Answer.* Well, I believe it carried it out by all the meanness it could. The intention of it was, so the leading men told me, to overthrow the Republican party and put the other party in power. That is the way the oath was administered to me.

*Question.* Have you a copy of the oath?

*Answer.* No, sir.

*Question.* Have you seen the oath that is published in the President's message?

*Answer.* Yes, sir; that is pretty much the same.

*Question.* Look at the oath as there given and say if that is the oath you took.

*Answer.* [Reads the oath.] That is pretty much the same oath.

By Mr. Nye:

*Question.* After you had taken this oath, state whether there was any explanation given as to what it meant.

*Answer.* Well, it meant the overthrow of the Republican party and injure it all that they could, and have the other party come in power.

*Question.* State whether it was explained to you that it meant anything about the Constitution as it is or as it was.

*Answer.* As it was.

*Question.* Both of the State and of the Union?

*Answer.* Yes, sir.

On page 240 he goes further, and says:

They told me they wanted the Constitution as it was before the war broke out.

*Question.* Did they tell you what the object was?

*Answer.* Yes, sir; in the first meeting. I was initiated in Kennedy's barn.

*Question.* Did you take the oath?

*Answer.* Yes, sir; and then the next Saturday went to the meeting.

*Question.* What did they tell you then was the object of the organization?

*Answer.* They told me it was to damage the Republican party as much as they could—burning, stealing, whipping negroes, and such things as that.

*Question.* Murder?

*Answer.* The leading men it was to murder.

*Question.* You have a neighbor living by you?

*Answer.* Yes, sir; Mr. Waters, within a hundred yards of me.

*Question.* Was he a Republican?

*Answer.* Yes, sir.

*Question.* State whether you were ordered to do anything to him.

*Answer.* Yes, sir; we had a meeting to burn his barn and gin-house.

So much both for the purpose of the organ-

ization and for the means by which it was to be accomplished, as proven by this witness, and now to go further, as bearing upon recent events occurring in South Carolina. On page 244 he states:

*Question.* State to what extent this Ku Klux Klan was to go in breaking up what they called the Radical party.

*Answer.* Well, we was to put it out of the way some way or another, if not kill and burn, till we got the Democrats into power.

*Question.* That was the direction you had from the Klan?

*Answer.* Yes, sir; the direction that they give me and all the balance that was in there when I was.

*Question.* To kill and drive out till the Democratic party—

*Answer.* Got into power.

*Question.* Was that carried out?

*Answer.* Yes, sir; I believe so; it has the power, anyhow.

*Question.* Was that the business of the Ku Klux Klan?

*Answer.* That is what they told me it was; that was our duty, to break it up.

While I am on this subject, as bearing also on recent events in South Carolina, let me call attention to another statement made by this witness:

*Question.* While in Cabarrus county did you go into South Carolina?

*Answer.* Yes, sir; I went into South Carolina as I came from Lenoir county; I found my friends in South Carolina.

*Question.* State whether the order existed there.

*Answer.* Yes, sir; they told me it existed from there to Georgia.

*Question.* Did you learn from your commander, or otherwise, that the order existed throughout the southern States?

*Answer.* Yes, sir; I heard him tell me them very words out of his mouth—that it existed plumb through the southern States; said they had a complete line of it.

*Question.* Of what kind of people was the Ku Klux Klan composed? Was it made up of men who were in the rebel army?

*Answer.* Yes, sir. I don't believe there was one that belonged to it but what had been in the army. There was one little fellow, with one leg shorter than the other—I don't think he was in the army.

There, sir, are three witnesses, all of whom are members of this organization, all of whom testified to its objects, showing that they were identical with those which were proclaimed by the Senator from Missouri in his letter which was made the basis of the Democratic platform in 1868. Three other witnesses are sworn, Bradshaw, Murray, and Rodgers, all three of whom swore to this oath as being the oath which they took, several of them making exceptions as to one or two sentences which they said they did not remember. I do not propose to take up time in reading the oath. It has been already laid before the Senate in the remarks of the Senator from Ohio, [Mr. SHERMAN;] but to preserve the continuity of the remarks I shall here make I will have it inserted in the report of what I say:

"You solemnly swear, in the presence of Almighty God, that you will never reveal the name of the

person who initiated you; and that you will never reveal what is now about to come to your knowledge; and that you are not now a member of the Red String Order, Union League, Heroes of America, Grand Army of the Republic, or any other organization whose aim and intention is to destroy the rights of the South, or of the States, or of the people, or to elevate the negro to a political equality with yourself; and that you are opposed to all such principles: so help you God.

"You further swear, before Almighty God, that you will be true to the principles of this brotherhood and the members thereof; and that you will never reveal any of the secrets, orders, acts, or edicts, and you will never make known to any person, not a known member of this brotherhood, that you are a member yourself, or who are members; and that you will never assist in initiating, or allow to be initiated, if you can prevent it, any one belonging to the Red String Order, Union League, Heroes of America, Grand Army of the Republic, or any one holding Radical views or opinions; and should any member of this brotherhood, or their friends, be in danger, you will inform them of their danger, and, if necessary, you will go to their assistance; and that you will oppose all Radicals and negroes in all of their political designs; and that should any Radical or negro impose on, abuse, or injure any member of this brotherhood, you will assist in punishing him in any manner the camp may direct.

"You further swear that you will obey all calls and summonses of the chief of your camp or brotherhood, should it be in your power so to do.

"Given upon this, your obligation, that you will never give the word of distress unless you are in great need of assistance; and should you hear it given by any brother, you will go to his or their assistance; and should any member reveal any of the secrets, acts, orders, or edicts of the brotherhood, you will assist in punishing him in any way the camp may direct or approve of: so help you God."

Take the oath as it stands; look at its terms; and can any man doubt that the object of the Ku Klux Klan was identical with that of the Democratic party? No man who was a member of the Union League could ever get into the White Brotherhood; no man who had been a member of the Heroes of America, an order striving to preserve the Union during the rebellion, could ever get into it; no man who had ever followed the flag of the Union could get into it. And, sir, it is a remarkable coincidence that while the good men of North Carolina in the Democratic party—and there are many of them, and I intend to do them all honor, ay, more than honor, when I come to them, by name, for having the courage in the midst of such an organization to stand up and denounce this wing of their party—it is a significant fact that a large wing of the Democratic party in these Ku Klux Klans in North Carolina had necessarily to be soldiers of the rebel army in order to enable them to enter the portals of the secret, mystic ring!

But a question is raised about a certificate that is given in evidence in the case. A question has been made by the Senator from Delaware [Mr. BAYARD] as to whether that certificate was signed by the witness whose attention was called to it. I believe this is the only witness to whose testimony any such allusion has been made in the majority report as might



be considered even an animadversion, W. S. Bradshaw; and that was only for the purpose of showing the difficulty of getting straight-forward, candid testimony from men who have been members of this organization. And now to the allegation that he did not sign it. The certificate is read to him in this way:

*Question.* Look at the statement now shown you, dated July 28, 1870, signed by a number of members, your name among the rest:

ALAMANCE COUNTY, July 28, 1870.

We, the undersigned, citizens of Alamance county, do hereby acknowledge that we have been members of an organization in said county known to the public as the Ku Klux Klan, but known to the members thereof as the White Brotherhood, or Constitutional Union Guard.

This organization in the outset, as we understood it, was purely political, and for the mutual protection of the members thereof and their families; but since joining we have been pained to know that while the objects of the organization were to attain certain political ends the means used and resorted to were such as would shock a civilized and enlightened people. And we hereby publicly and independently dissolve our connection with this organization, and call upon upright and law-abiding citizens everywhere to do the same thing, knowing, as we do, that unless the crimes which have been committed by this organization can be put a stop to, and the organization itself entirely broken up, civil liberty and personal safety are at an end in this county, and life and property and everything else will soon be at the mercy of an organized mob.

We intend to see that the signs, grips, and passwords of this organization are fully exposed, together with the plans of operations, &c., so that the people everywhere may see with their own eyes.

In making these confessions we have implicated no one but ourselves, but we hope that our friends will take warning, from what has transpired within the last few days, and immediately withdraw from organizations such as we have mentioned, and assist us and all other good citizens in restoring peace and good order in our county.

CLEMENT C. CURTIS,  
JAMES E. BOYD,  
ROBERT HANNER,  
JOHN R. STOCKARD,  
JACOB MICHAEL,  
J. N. H. CLENDENIN,  
HENRY ALBRIGHT,  
JAMES H. FOUST,  
D. D. TEAGUE,  
A. J. PATTERSON,  
J. A. J. PATTERSON,  
JOHN G. ALBRIGHT,  
CHRIST. C. CURTIS,  
S. A. CURTIS,  
W. S. BRADSHAW,  
JASPER N. WOOD.

Did you sign that?

*Answer.* No, sir.

*Question.* Is your name there?

*Answer.* Yes, sir.

*Question.* How was it procured?

*Answer.* This is the first time I ever read it.

Then with reference to other names on it:

*Question.* Was Clement C. Curtis a member of the organization?

*Answer.* Yes, sir.

*Question.* Robert Hanner?

*Answer.* Yes, sir.

*Question.* James E. Boyd?

*Answer.* Yes, sir.

*Question.* John R. Stockard?

*Answer.* Yes, sir.

*Question.* Jacob Michael?

*Answer.* I do not know anything about Michael.

So it follows with all whose names are to it, and he answered with reference to all of them affirmatively:

*Question.* Jasper N. Wood?

*Answer.* He was chief.

*Question.* Is there any other Bradshaw?

This is all for the purpose of seeing the candor of this man as to not having signed this certificate:

*Answer.* None other. I can explain that. John R. Stockard came down to my house, I think, the same day this was signed. He told me what was going on; that was the first I knew of any arrest being made. He said they had signed a piece of writing to the effect that they were going to disband and have nothing to do with it. I told him I was entirely favorable to that, and I didn't care who knew that I had belonged to it; that I was opposed to the whole system, and if that was all there was of it, he might just go and put my name to it.

*Question.* You gave your authority to Stockard to put your name to this?

*Answer.* Yes, sir; but I never read it before.

*Question.* Are the statements made in it correct? Was it read to you?

*Answer.* No, sir; he told me that was the substance of it.

*Question.* Without regard to how you came to sign it, do you say that the statement in this card, in which your name appears, is correct?

*Answer.* (reads the card.) No; I don't understand it to be "purely political." I never did understand it in that way.

*Question.* Is there anything else in it to which you find exception?

*Answer.* I do not know that there is.

*Question.* Then with that exception the statement you say is correct?

*Answer.* Yes, sir.

"With that exception the statement is correct." For the purpose of discrediting this certificate the Senator from Delaware made an argument that this man had never signed it.

Mr. BAYARD. Are you going to stop there?

Mr. SCOTT. No, sir, I am going on. Then this man is a member of the Ku Klux organization, and the first thing we had to get out of him in the examination, as anybody will see, was that if he disclosed any of the secrets of the order, he did it under the penalty of death; and he told us that every word he uttered to us he felt was under the penalty of death. After all that protracted examination we got out the fact that every other statement that was in the certificate was true except that his understanding was that the purposes were not purely political, that there were some others in it, meaning, I suppose that, after they got through with politics the only way to make themselves successful was to go on with the violence and the disorder. Then the Senator from Delaware asked him, getting on another tack, "Do you now say that 'the means used and resorted to were such as would shock a civilized and enlightened people?'" And he answered thus:

*Answer.* I do not know that to be so at all, because I don't know that these things were perpetrated by that organization.

*Question.* Did you ever know?

*Answer.* Never on earth.



Then he goes on after having stated that everything else in the certificate but one is true, and by a protracted cross-examination gets him to take back almost every word of it. So much for this certificate signed by sixteen men, all of whom with one exception he says were members of the organization, that certificate stating that the purpose of—

"This organization in the outset, as we understood it, was purely political, and for the mutual protection of the members thereof and their families; but, since joining, we have been pained to know that while the objects of the organization were to attain certain political ends, the means used and resorted to were such as would shock a civilized and enlightened people."

Now, mark the qualification which that man made was that he did not understand the purposes to be purely political; that they were to go beyond that. They were political, but they went further than that. I leave him, and leave him to the consideration of every man who will see proper to read the testimony. Looking at his testimony and at the deeds of blood and violence committed by his associates, I wish it could be borne in mind by every man who thinks of entering these secret political organizations, I care not to further whose ends they are instituted, that they begin by demoralizing the man who goes into them. The moment a man enters a secret political organization, a cardinal principle of which is to deceive his neighbor by denying that he belongs to it, that moment his moral principle is undermined, and it is only a question of time as to when he will reach down to the depths of vice to which all such demoralization inevitably tends. The distance between the falsehood of the newly-made Ku Klux of Alamance county and the murder of Wyatt Outlaw was not a very great one.

There are three of these men, Bradshaw, Murray, and Rodgers, all of whom were members of this organization. As to the two latter I shall have something to say in another connection. These six men were not all examined in Alamance county, as stated by the Senator from Delaware. Long, the commander of the organization, when the military were ordered there, found it convenient to go to Arkansas, and never did give his testimony until he gave it before the committee. Having shown the identity of purpose between the Democratic and the Ku Klux organizations, namely, the overthrow of the reconstruction acts, I go on to show what view the minority of the committee take of this question. They say:

"The undersigned believe that all the disorders which exist in that State were created by unjustifiable and unconstitutional legislation of Congress in regard to its government."

What were the disorders which they say were traceable to these acts? After having instilled

in the public mind opposition to the reconstruction acts by the letter of the honorable Senator from Missouri, sown broadcast over the land, and by the indorsement of it in the national platform of the Democratic party, and after saying these disorders are traceable to the reconstruction acts, let us see on what ground it is that they declare that reconstruction is a failure; a failure because Democratic instigation has produced murder, robbery, scourging, and shooting for the purpose of making it a failure. I submit that whether or not reconstruction is a failure is not the true question. The question is whether this Democratic conspiracy against the governments established upon the reconstruction acts shall be a success. The fourteenth amendment has made fundamental law that which depended upon an act of Congress before in 1867. The negro has his rights by fundamental law. The thirteenth, fourteenth, and fifteenth amendments have been adopted by the Legislatures of those reconstructed States; and the doctrine which proclaims reconstruction acts unconstitutional and that they are to be overthrown, whether by a usurping Executive or by the operations of the Ku Klux Klan, leads inevitably to the result that these States are to be taken back to where they were in 1860, and that all that has occurred in the mean time is to be blotted out. That is the logical result alike of the Democratic platform of 4th July, 1868, and of the teachings and operations of the Ku Klux Klan.

That doctrine was submitted to the people and was decided in November, 1868. These disorders, they say, continued from August, 1868, until August, 1870; and the question having been decided, I shall ask, when I get through with these disorders and their dates, why it was that after the question was submitted to the people and was decided these disorders continued down to August, 1870?

I turn now to the means used to make this conspiracy successful. I do not wish to parade a list of murders to horrify anybody. That is not to my taste. I shall use here only the instances that we have had actually before us, only the instances that the witnesses have proved they saw—five of them the victims, and one proven the most outrageous case I think of them all by witnesses who saw the occurrence.

The first case I shall allude to is proven positively to have occurred in Graham, North Carolina. It is the murder of Wyatt Outlaw; and, sir, that I may have it properly characterized, and may not be blamed with anything sensational in speaking of it, let me read how the Senator from Delaware [Mr. BAYARD] viewed the murder of Wyatt Outlaw before I come to show who did it and why it was done. I read from the report of the Senator's speech:

"There was the case of Wyatt Outlaw, a black man

who was murdered in the spring of 1870. That has formed the staple of an immense amount of testimony."

So it ought.

"The outrage is not denied. There is nothing to extenuate it; it was an abominable, cruel case of murder; and yet the facts disclosed in that case by the confession of one of these negro Ku Klux, who himself is now in jail, is that this man was murdered by these bands in retaliation for his having shot at them and his threat that he would repeat it. I do not mean to say this act justified his murder; very far from it; but I do mean to say it was a natural act of retaliation by violent men; for if he could shoot at them and not be arrested, it was a mere question who should be quickest to exterminate the other."

I would to God the people of North Carolina who have been winking at these outrages would consider these words of the Senator.

"These are some of the evils of a lawless condition of society."

There is the Senator's estimate of Wyatt Outlaw's murder. Now, taking his characterization of it, let me state who he was. He had once been elected a town commissioner by the Republicans; he had been a candidate again, and being a candidate made him obnoxious to the Democrats in that neighborhood. They hung him to the 26th of February, 1870. I say "they"——

Mr. BAYARD. Who hung him?

Mr. SCOTT. I will show who. I will show that they were Democrats. They hung him on the 26th of February, 1870, taking him out of his own bed and hanging him in cold blood with a bed-cord, within forty yards of the courthouse door, defying justice by the very act.

"Who hung him?" asks the honorable Senator. I am glad he makes the inquiry; and before I go on, will he let me show the pretexts which he states are given for this murder? It seems that these Ku Klux had ridden through the town of Graham just one year before, in February, 1869. From February, 1869, until February, 1870, no living man ever heard that Wyatt Outlaw had shot at the Ku Klux in 1869, and it would not have been the worst thing he could have done if he had; but no living man ever heard it until after he was hung, in February, 1870; and what kind of a pretext is it to say that a man had shot at a band of Ku Klux a year before, for coming and deliberately taking him out of his bed and hanging him? Now I will answer the Senator's question, who did it, and as he seems to have some doubt on the subject, I shall take a little pains to show who did it. I refer, in the first place, to the testimony, on page 24, of James E. Boyd:

Question. Have you personal knowledge of the infliction of punishment upon any individual in pursuance of the sentence of one of these organizations, or is your knowledge derived from hearsay?

Answer. Yes, sir; I think Outlaw was hung pursuant to sentence.

Question. How do you know that?

Answer. I knew that the organization of the White Brotherhood hung him.

Question. Were you then a member of it?

Answer. I was.

Question. Did you vote upon his case?

Answer. No, sir.

Question. Were you present at the meeting that condemned him?

Answer. No, sir.

Question. How, then, did you know it?

Answer. Members of the organization who were present at the hanging told me afterward that they were there. At least one member did.

And he gives the name of that member who told him who it was.

Question. Did any members of the organization make any statement about their knowledge of or participation in the murder of Outlaw?

Answer. Yes, sir; I stated before that James Bradshaw told me he was along with the crowd that murdered him.

Question. Did you know him to be a member of the organization?

Answer. Yes, sir.

Question. Was there any other person—a man named White?

Answer. There was a young man by the name of White; he was quite a youth. I do not recollect that I ever saw him before he spoke to me about it. Directly after the soldiers came there (I suppose he had learned that I was a member) he came up to me on the street and said, "I understand the officer here has got the names of sixteen of us boys that were here the other night." I understood him to refer to the night Outlaw was hung. I told him I had not had any intimation of the kind. I did not know that such was the case. That was the only conversation I had with him.

Question. Do you know where Bradshaw is now?

Answer. He went West; but he is at home now, in Alamance county, or was; so I was informed. I have not seen him.

There are two members of the White Brotherhood who, in language not to be mistaken, said to this man that they were there when Outlaw was hung. But that is not all; I go now to page 288, and what do I find there? In the testimony of W. S. Bradshaw this occurs:

Question. Do you know other men of the name of Bradshaw?

Answer. Fisher Bradshaw was a young man and James Bradshaw was a young man.

Question. Which of them was it, if you remember, that Mr. Boyd disclosed?

Answer. James Bradshaw, Mr. Boyd said, told him he had been there.

Question. Was he a member?

Answer. Yes, sir; you have his name.

These offenses do not rest on the *ex parte* testimony of Mr. Boyd, as was stated here. There is testimony of Boyd that both these men told him they were there; they were both known as members of the organization; and here is a third who testifies that this young man was a member of the organization. And now, one step further, on pages 259 and 260, we have the testimony of Jacob A. Long in regard to the hanging of Outlaw:

Question. How far did he live from the courthouse?

Answer. About four or five hundred yards.

Question. They brought him to within forty or fifty yards of the courthouse?

Answer. Yes, sir; I should judge about fifty.



*Question.* Did you go out into the crowd at the time they were perpetrating this outrage?

*Answer.* No, sir; I stayed at my office door, which opens on the street.

*Question.* How far away was your office?

*Answer.* About one hundred and twenty-five yards from the court-house.

*Question.* Could you hear what was said?

*Answer.* I heard only one remark.

*Question.* By persons in disguise?

*Answer.* I do not know; it was in the dark.

*Question.* What was the remark you heard?

*Answer.* "Here is a good limb."

*Question.* Limb of a tree?

*Answer.* I do not know.

This man, remember, was commander of this organization in the county.

*Question.* Was he hung to a limb?

*Answer.* He was.

*Question.* Were the disguises the same that you used while in the brotherhood?

*Answer.* They looked like the same—white.

*Question.* They were used while you were in the order?

*Answer.* Yes, sir.

*Question.* Why were they disguised?

*Answer.* The object was, when a person was brought into the meeting, that those who initiated him could not be known in case he refused to become a member, so that he could retire and never know who they were.

*Question.* Were the other members disguised also?

*Answer.* No, sir; none but those who were to officiate in the initiation.

*Question.* All those sixty persons that hung Outlaw had on the disguises of the order?

*Answer.* They had on white disguises.

*Question.* Such as were used while you were commander?

*Answer.* Yes, sir.

*Question.* Did you go among them and endeavor to dissuade them from hanging him?

*Answer.* No, sir.

Two members of the order say they were there, a third member proves that one of them he knew was a member. The commander of the order says that he saw the sixty men who did it, and that they had on the disguises of the order when they did it. Nobody could get into the White Brotherhood but Democrats, and the sixty men who wore the disguises on the night that Wyatt Outlaw was hung were sixty Ku Klux Democrats in disguise. That is my answer to the Senator's question, "Who did it?"

And now, sir, as the gentleman has put the inquiry, to show how it was viewed in that community, let me here offer the testimony of a man who was not a partisan, a man who was honored in the community where he lived, and has enjoyed the confidence of all parties, and who saw the crowd in that town upon the night that this poor negro was hung; and what does he say about it?

*Question.* After this thing occurred was there any difference in the tone of public sentiment in the two political parties as to the offense?

*Answer.* You mean by that, whether there was one class that would justify the murder and another denounce it?

*Question.* Yes, sir; I want to get at the tone of public sentiment, if possible.

*Answer.* I will explain in this way: if a stranger

were to come into our village he could have told every Democrat and every Republican simply by hearing them express themselves, the Conservatives unanimously justifying it and the Republicans, or Radicals, as they are termed, unanimously denouncing it.

There is the manner in which this thing was viewed at the time it occurred. I do not stand here to say that the whole Democratic party of North Carolina were members of this organization. Far from it. I would be guilty of no such injustice, but there is no denying the truth of Pope's saying, "a fellow-feeling makes us wondrous kind;" and having shown the identity of purpose in which these parties were engaged, it is entirely natural that the fellow-feeling should divide the parties in that little town of Graham, where these horrible occurrences took place, in just the manner that Squire Harden describes. That is the only case of those I shall use in which we have not had the victim before us. He has gone to a tribunal where Ku Klux cannot perjure themselves to shield their confederates in crime from the penalty of infallible justice.

Samuel Allen (page 47) is a colored man, a magistrate and a shoemaker, and on the 8th of May 1870, they came to him, took him out of his house, fired at him, drove him from home at night, and his house was visited again and his property destroyed. For what was this done? I will not take time to read over the whole testimony showing the outrage and the character of it, but I do wish to give in his own language the offense for which this man was thus treated and driven from his home:

*Question.* Had you committed any wrong to any of the people?

*Answer.* They said I had committed a great wrong; I had kept a Sunday-school, which I was forbidden to do. They told me that this thing of teaching niggers and educating niggers was something they did not allow; that the church they belonged to never sanctioned any such thing; that it was not sanctioned by the neighborhood or the country, and it must not be done; and finally they told me it should not be done, and when I proceeded on with the Sunday-school they said to me, "We gave you orders to stop and you have continued against our orders; now you have got to stop."

There is an expressive sentence in that colored man's testimony which conveys more vividly the state of feeling among the colored people than anything I can say. It is in answer to this question:

What is the sense of security as to life and property among the colored people in the county where you live, Caswell county?

He answered:

We do not feel secure at all. The night coming on has been to us there like judgment; there is no mistake about that."

"Like judgment; there is no mistake about that!"

I pass on to the next, a man named Corliss, who was whipped on the 26th of November,



1869. He had preached to the colored people on the evening of that day, and about twelve o'clock at night the Ku Klux came to his house, took him out, carried him about a mile into the woods, and there barbarously beat him, crippled as he was. He had to walk upon crutches. He was not, as the Senator from Ohio mistakenly supposed, a soldier, but a crippled preacher and teacher, who had been sent by the Friends of Philadelphia into North Carolina to take charge of a colored school, and the allegation given to him for his whipping was that it was done "for teaching niggers and making them like white men." Corliss himself was a white man.

Who is the next man? Caswell Holt, taken out twice, December, 1868, and December, 1869, the first time whipped barbarously and the second time shot with five bullets and three bird-shot. Now, sir, that I may not be accused of exaggerating, again let me quote the Senator from Delaware in regard to Caswell Holt:

"One of the parties injured, whose name has been in the mouth of almost every witness, was a colored man named Caswell Holt. We had heard of him in a dozen different quarters. When any witness was asked to specify a case of outrage, 'Caswell Holt' was among the first mentioned. Finally, Caswell Holt came himself, a respectable, well-behaved colored man."

And now, sir, mark it, that, notwithstanding the Senator from Delaware in the introductory sentence seeks to make as little as possible the case of Caswell Holt, I wish that every such case which the Democratic press North seeks to belittle could be brought into the presence of a man of feeling and of honor, just as Caswell Holt was brought into the presence of the Senator from Delaware. Then they would see for themselves what these outrages are, and then there would be no more undertaking to whistle these cases down the wind, as they have been doing for a year or eighteen months. Now, what does he say?

"Finally, Caswell Holt came himself, a respectable, well-behaved colored man. He related his story of wrongs. He had been treated in the most cruel and cowardly manner. No man who heard his testimony but burned with indignation toward the cowardly scoundrels who had inflicted the injuries upon him. But when Caswell Holt is asked—and he lives in that county, is one of the chief men among his race in that county, well acquainted with the facts detailed—when he was asked by me how many cases of outrage he knows himself personally in that county, he tells me he knows of six."

Oh! the six that Caswell Holt knew of are again belittled by speaking of three poor ignorant negroes who undertook to imitate these Ku Klux in disguise, and in order to do it put out their shirts over their pantaloons and made paper masks, and went around to make a raid on two or three negroes; and the result is North Carolina justice has the whole three of them in the penitentiary. Where are the men who

whipped Caswell Holt? What penitentiary holds them?

Before I go further with Caswell Holt, let me show another thing with reference to this very case which has so excited the sympathy and the indignation of the Senator from Delaware when it is brought before him. I speak of Long's testimony, page 262:

*Question.* During the time you were in connection with that body was any proposition made at any time, in either the county or in a subordinate camp, about any infliction of a wrong upon members of the other party?

*Answer.* There was never any proposition made when I was present, and I only learned of one. There was a young man, named John R. Long, met me one day on the street, stopped me and said, "They are going to hang Caswell Holt." I laid my hand on his shoulder and said to him, "Now, I do not want you to tell me anything about who is to do it, and I want you to go to whomever it is, and tell them for God's sake not to do it." I turned right off and left him.

*Question.* Was Caswell Holt hung?

*Answer.* No, sir.

*Question.* Was he whipped?

*Answer.* He was whipped before that.

And then he was shot afterward. Here is the evidence from the man who was commander of the camp at the time it was communicated to him that the camp had decided to hang Caswell Holt; and because that man dissuaded them from hanging him he had to lay down the robes of office. The Constitutional Union Guards succeeded the order of which he was commander, and in December afterward he was initiated into that. Notwithstanding he had declined to assist in the murder of men whose death his former fraternity had decreed, he went into an organization in December, the only difference being that he says the discipline of that was a little more rigid. God knows if the discipline was a little more rigid it was rigid enough, when it was so rigid in the other that when a decree for murder was passed it had to be carried out!

The next man is named Ramsour, a white man. In January, 1869, they came to his house and whipped him. They had whipped negroes in his neighborhood because they had voted with him, and while the barbarous whipping which they gave him was going on, as will be found by referring to page 416 of the testimony, one of the fiends came up and whispered in his ear, "Vote the Conservative ticket and you will be all right, and there will be no more whipping."

C. D. Upchurch was the sixth man who was the victim. And what was he? He was a revenue officer. He had been collecting revenue in Chatham county and seizing some illicit stills. He was met on the highway, taken into the woods, detained three hours, and after being detained that length of time they said to him, "If you ever come into this country and seize any more stills just pick out your tree."

Here, sir, look at the class of people who are made the subjects of outrage. Outlaw is murdered. Allen, for teaching a Sunday-school, is whipped and driven from home. Corliss, for teaching a Sabbath-school, and, as was alleged, for striving to get a seat for a black woman in a congregation of white people, was driven from the State. Caswell Holt—for him I refer to the language of the Senator from Delaware, a "respectable colored man," whipped and shot. Ramsoul, a citizen of property and a man of influence, was whipped also for voting the Radical ticket; and Upchurch, a revenue officer, was directed never to show his face there, or if he did he would find himself suspended to the limb of a tree.

These are all living men before us. They testified, and when they did so they forced conviction on the mind of the Senator from Delaware that these outrages are perpetrated by scoundrels, and that they deserve and receive the scorn and indignation of all right-feeling men. But, sir, how are they perpetrated? Are they perpetrated upon the individual responsibility of these members? Have I not shown the organization? Have I not shown the material of which it was composed? Have I not shown that they execute the decrees of their camp? But if there be any doubt about it I wish to show, not simply that they execute the decrees of their camp, but that they do carry these decrees to an extent which no civilized community would believe. I refer to the testimony of Willeford, on page 242:

*Question.* Was that the meeting at which the case of Myers was acted upon?

*Answer.* Yes, sir; that was the meeting.

*Question.* What was the resolution of that meeting?

*Answer.* It was working with Myers and Colgrove both.

*Question.* Who was Colgrove?

*Answer.* He was sheriff of Jones county.

*Question.* Was he afterward killed?

*Answer.* Yes, sir.

*Question.* Describe how.

*Answer.* Shot with a double-barrel shot gun.

*Question.* Where?

*Answer.* In his own county. He was going home to a trial that day and was shot on the way.

*Question.* Who shot him?

*Answer.* Well, I can't tell you who shot him. Some of our boys was to go, but I do not know whether they ever went or not.

*Question.* Was it determined upon that he should be killed?

*Answer.* Yes, sir; it was determined that, provided the county would call on our camp for help, they should have it.

*Question.* And kill the sheriff of Jones county?

*Answer.* Yes, sir; they had an organization in Jones county, and if Jones called the Lenoir camp they was to assist.

*Question.* State what was done at different times; the sending of men out of the camp into other counties to execute orders?

*Answer.* Yes, sir; it was done to keep from being known.

*Question.* How long after the meeting in which the sheriff's death was decreed was it before he was killed?

*Answer.* It was about two week, I think.

*Question.* What further business, if any, was done at the second meeting you attended?

*Answer.* There was a big picnic or barbecue to be made provided they killed Colgrove, and then the men who went was to have so much money for going.

Can the annals of civilization afford a parallel for that? Talk about the cruelty of the Italian banditti! Talk about the exploits of the Thugs of India! Talk about the horrors of the Vehmich tribunals of Saxony! Are there any that afford a parallel to this? They decree the murder of the sheriff of an adjoining county, and at the same meeting fix a barbecue to rejoice over it if it was successful. Why, sir, take this organization and its object and the means of accomplishing it, and it shows one in comparison with which the bloody code of Draco puts on the hues of love and mercy. And all this to overthrow the reconstruction acts and disfranchise the negro! These are the purposes.

Let me now take up the testimony to show the object of these outrages. Ramsour says (page 419) that in the township in which he lived he was the only white Republican; that twenty negroes voted with him at the constitutional convention election, and that at the last election but one would go to the polls. On page 50 Allen, whose testimony I have already quoted, shows the effect on the colored people. On page 346 is the evidence of the witness who is indorsed by the Senator from Delaware. Let me give what he says on that subject, Caswell Holt:

*Question.* You say the colored people do not feel secure since these whippings have taken place?

*Answer.* No, sir; they don't. And a great many whites don't.

*Question.* What is the feeling now among the colored people there in regard to these Ku Klux organizations; are they still afraid they will be interfered with by them?

*Answer.* Yes, sir; they are afraid yet; and a great many of them will not live out in the country at all, because they are afraid to stay anywhere out of town.

*Question.* Have you talked much with the colored people in that part of the country?

*Answer.* Yes, sir; I know a great many of them.

*Question.* What is the feeling among them generally in regard to their safety?

*Answer.* Their general feeling is very bad, because they are scared; a great many of them would hardly go to the elections on that account.

*Question.* Of what were they afraid?

*Answer.* They were afraid that if they went to elections and voted, those who lived in the country, that they would go after them at night and beat them, and kill them, and hang them, or something of that sort.

*Question.* Were any of the colored people kept away at the last election by that fear?

*Answer.* Yes, sir; a great many of them were kept away by that; a great many where I live that I know.

So others testify. This is the effect, then; not absolutely to take away the ballot, but, what is the same thing, by intimidation to prevent them from casting their votes. These are specimens of the outrages which have occurred



in that State from 1868 until August, 1870, the period covered by the admission of the minority report. And, sir, with the fact staring the world in the face that these outrages were perpetrated for the purpose of overthrowing the reconstruction policy of Congress, the Senator from Delaware tells us that reconstruction is a failure, and he points us to Virginia as the only State in which the Democratic party is in power and where reconstruction is a success. Did he reflect that he could have paid no higher compliment to the Republican party of the nation? In Virginia under the reconstruction acts the Democratic party got into power, and there is no Republican Ku Klux organized there. They submit, and yet the Democratic party is the party of law and order! When reconstruction resulted in putting the Radical party in power in North Carolina the members of your party organized the Ku Klux and sought to overthrow it by rapine and murder and violence.

Why is it a failure, if it is a failure, in North Carolina? Because, according to the information given to this man Boyd, forty thousand Democrats have rebelled against it; and instead of wearing the rebel gray and going into the rebel camp for the purpose of overthrowing it, they are in the Ku Kux Klans, with this horrible disguise upon them, traveling at night, and striking down the humble and the lowly for the purpose of overthrowing reconstruction.

Now, sir, we have this state of affairs. The identity of purpose is shown. The condemnation of that purpose was given by the people in 1868, when the issue was plainly made. With the civil rights bill of 1866, with reconstruction in 1867, with the constitutional amendments in 1868, all adopted by the people, all the laws of the land, either statute or fundamental, yet a rebellion is organized in North Carolina for the purpose of overthrowing them; a cowardly, a barbarous rebellion, to be carried out under cover of night.

In view of Willeford's testimony, that this organization exists in South Carolina, what is the consequence of all these events? A notice within the last week upon the Governor of South Carolina and all his officers that they must leave. The election of August last in North Carolina, resulting through this intimidation and violence, and another cause of discontent, with regard to the debt, which I shall come to directly, passed the Legislature of North Carolina into the hands of the Democrats. The same thing is to occur in South Carolina by the same means, and thus reconstruction is to be overthrown in North Carolina, South Carolina, Alabama, Mississippi, and Florida, where similar outrages are occurring; and when that halcyon day shall come, then these States will be in the position that they were before the war, I suppose. Then

there will be a clear path open for a triumph in 1872, when there will be an Executive who will carry out the embodiment of the doctrine of the Senator from Missouri as found in the Democratic platform of 1868. That is the idea. And because the Senate of the United States institutes an inquiry for the purpose of ascertaining whether these outrages do exist and are true, the charge is that the effort is to get back power in the State of North Carolina. What do we propose to do? Simply to punish crime and stop outrage; and if punishing crime and stopping outrage result in a loss of Democratic power, no greater blessing can befall the country.

Now, sir, after having given this statement of the persons who have been wronged, I cannot forbear bringing before the Senate and the country two representatives of the different classes of society in the State of North Carolina, who accidentally presented themselves before this committee. I have already referred to Caswell Holt, and to the indorsement given to him by the Senator from Delaware. Let me tell you who Caswell Holt is. He is about thirty-six years of age; a black man, of the character described by the Senator from Delaware. He has a wife and nine children. He is living on a piece of land that belongs to a man named Colonel Jerry Holt. He has a lowly cabin, at the edge of the woods, in Alamance county. This man Caswell Holt was once a slave. We were not aware on the 20th of February, when we examined Edwin M. Holt, esq., that we had before us the former master of Caswell Holt. Caswell testified to this state of facts: that they came to his house; that they took him out from the midst of his wife and nine children; that they tied him, in the first place, to a tree—I believe they tied him—and endeavored to impress upon him the idea that they were intending to whip him for some imaginary theft, though the proof is clear that he never committed any. Then they took and bucked him. They tied his hands and put a stick under his arms and behind his legs, and thus bucked him. They then released him from that position, and rubbed his back with the stick, and beat him until the blood streamed and the flesh came from his lacerated back. This was done in December, 1868. He goes and tells Colonel Jerry Holt, upon whose lands he lived; and he is told that he must be mistaken about this; that it is a mystery; that there is something wrong about it.

Now, how about the old master? The old master was before us on the 20th of February of this year. He is a manufacturer, a merchant, and a farmer. He was inquired of as to the injuries to persons in Alamance county. He lives within two or three miles of where his former slave, Caswell Holt, lives. That I may do him no injustice, I turn to the testi-



mony and read his own language, for it is very significant. This question was put to this very respectable and worthy gentleman, for such he is, and I have no wish that any remarks I make may be construed in any other manner; but I wish to introduce him as a representative character in his position:

*Question.* How as to injuries to persons?

That is, in Alamance county.

*Answer.* There have been some persons punished there. There was one negro hung in the town of Graham. Several notorious characters there have been punished, but in every instance they were persons of very bad character.

*Question.* By whom?

*Answer.* I could not say by whom.

*Question.* You cannot name the parties?

*Answer.* No, sir.

*Question.* In what manner have these wrongs been inflicted?

*Answer.* In several instances report said that the persons were disguised. In one or two instances I have heard that a part of them were disguised and a part were not. I never saw a disguised man in my county, nor anywhere else.

*Question.* From the knowledge which you have gained from public sources, what effect have these outrages had upon the sense of security felt by the citizens?

*Answer.* My impression is that there was no insecurity felt by persons who were law-abiding and behaved themselves.

I call attention to his testimony in view of what afterward appeared to be the fact, that his former slave had called upon him after the whipping, which has been properly described by the Senator from Delaware, and told him of it. I come to that now, for after he had given several instances which had occurred in the county, this general question was put:

Have you nothing further to state as bearing on this general question?

*Answer.* I do not know that I have.

From one end to the other of the testimony of this representative man not one word was uttered about this outrage upon his former slave.

Now, sir, I will give Caswell's account of his interview with his master, who says that there was no insecurity for any man who behaved himself. There is no allegation that Caswell ever misbehaved himself. Now, here is a narrative which I think would affect any man who reads it with the simplicity and earnestness of this man, Caswell Holt, and with the remarkable state of society in which the former master could hear this statement and forget it on the witness-stand, or give the counsel which he did at the time:

*Question.* Did you ever tell this story to your old master, Squire Holt?

*Answer.* Yes, sir; I told him the same story. When I got so I could walk I started down to see Colonel Jerry Holt, and find out what he thought I had better do. They said I was to leave the county in ten days, and I wanted to get his advice as to what I had better do. He said that he thought may be I had better go away anyhow for a few days; just leave my family there, and go away myself for a few

days. My father had a horse. He lived about a mile off, on another place. I sent down and got my father's horse, and rode over to my old master's, about four miles from where I was living then.

Here was the first revelation we had that we had before us the slave of the man whom we had examined a few days before:

*Question.* Over to Mr. Edwin Holt's place?

*Answer.* Yes, sir. I talked with him about it. He asked me some questions about it, and told me that the less I said about it the better; that I would find out more by saying nothing about it, and not trying to have them arrested, than I would by undertaking to have them arrested. It was a new thing there; about the first outrage that was committed in Alamance. He said to me, "Cas., these things have been raging in the northern States for years; they are something mysterious; something that we people can't understand; it is a sort of resurrection; that's what it is, Cas." I said, "Yes, sir; but look here, master, you have been my master; you raised me from a child." He said, "Yes, I raised you Cas., and I respect you as one of my own children."

He forgot him on the witness-stand.

I said, "Well, do you suppose that the Almighty has given the dead power to rise now and go about beating people, and mummuicking them all up in that way?" He said, "It is something we can't understand, Cas.; something that has been existing for some time, and we can't understand it." I said, "Well, I can tell you this: you read the Bible, and I can't; but I tell you, if the Almighty has given the dead power to rise at this day and beat people who are living, the next time they come to my house there will be two of us there in the morning; for I will kill one if I can, and if I do, he will not come there any more till God does raise him right." He said, "Good evening;" and that is the last he and I said about it.

If there were a few more Caswell Holts in North Carolina who had in them that spirit of self-defense there would be fewer Ku Klux in six months. But, sir, I bring these two representatives of their classes for the purpose of showing how little appreciation we have in the North of the actual state of things. Here is a respectable man, once a slave, dragged out from his wife and nine children in 1868, shot at in the midst of his wife and nine children in December, 1869, and laid up for six months. He complains of it to his former master, the proprietor of manufactories and merchandise and farms, and he tries to persuade the poor negro that these are spirits raised from the dead. Ah, sir, I think I have shown the spirit that brought them into life. It had its birth in the New York convention in 1868. Its object is the overthrow of the reconstruction acts, and its ultimate end the overturning of the three amendments to the Constitution. Rising from the dead! Is that to account for these scenes of turbulence and violence? Is that to put down the complaints of these people who are scourged and murdered?

I do not wish to dwell upon it; but, sir, if this thing is to go on, where will be the end? Here is a man (and there are hundreds like him in the South) who is whipped without provocation; whipped so that the warm blood

of the Senator from Delaware mounts to his cheek and he burns with indignation when the man tells it before him; and yet when the former master comes to speak upon the stand of an offense like this he says that there were some cases in which people were "punished" in that county. "Punished" is the word, is it? Punishment carries with it the implication of crime. Innocent men are not "punished." Here was his former slave before him with his back bleeding telling him of this wrong, and when he comes before a congressional committee to tell the state of society there he says there were a few bad people "punished!"

Mr. President, as I have been looking at these two pictures since, I have been astonished that the thinking men of North Carolina cannot see where this thing is tending to. Here is a mob, yes, nothing less than a mob—that terror to all communities—

"Fantastic as a woman's mood  
And fierce as frenzy's fevered blood;  
That many-headed, monster thing"—

the mob that goes to this lowly man's cottage and drags him out and whips him. Sir, Jack Cade and his rabble, hanging all the lawyers with their ink-horns around their necks, may be a gratifying spectacle to those who are in sympathy with Jack and his crowd at the time; but do they not look far enough to see that the mob which can rule for one purpose to-day may just as readily turn against those whom they smile on to-morrow? Here is a man of intelligence, and he need not go very far to learn the lesson which would have taught him the final result. His former slave told him that he could read the Bible, and that he (the slave) could not. He need not have gone further; for if he had gone there he would have learned that the same streets which one day resounded with the cry of "Hosanna to the son of David," ere long was vocal with the cry of "Crucify him! Crucify him!" And, sir, if this thing goes on, these men may realize that the mob which could take Caswell Holt from his lowly cabin and scourge him, because he voted against their will, may ere long decree it a crime to own mills and merchandise and farms, and may sit down in the piazzas of the lofty home of his former master and cast lots over his goods, if not over his garments. That is where the thing is to end, unless it is stopped by the force of a united public opinion. If not arrested by that, it must be by the strong hand of law, or, failing that, by military power; and that is the point to which it is fast tending.

This now is the state of things in North Carolina. I do not intend to go into the condition of the other States. They are probably to be the subject of investigation. We can only judge of what causes are producing similar effects in

those States. I hope that when they come to be examined they may disclose no worse state of affairs than exists in the State of North Carolina; for, God knows, that is bad enough.

Now, sir, having gone over these offenses and their effects, I come to the reasons that are given in excuse or justification for them; first, the reconstruction acts, of which I have already spoken, and then the establishment of Union Leagues. On the general question of the utility of secret political societies in a republic I have such decided convictions that I have no hesitation in expressing them here or elsewhere. I think they are totally at war with the spirit and genius of republican institutions. I can hardly conceive of an emergency in a republican government which will justify the establishment of a sworn, secret political organization. When the ballot ceases to be the expression of the individual conviction of the voter, and is simply cast in obedience to a former oath, or as the result of the combinations of race, color, creed, clan, or nationality, then it ceases to be the true element of republican government. Therefore, I say there ought to be no secret political organizations.

But, sir, the Union League that is alleged as one of the provoking causes of these disorders was established in the North during the war. It had a political purpose; there is no doubt about that. That is disclosed. So we say in the report. It was established in the South in 1867 or 1868. Whatever may be said of their inexpediency, as an abstract question did these Leagues ever, as an organization, decree murder, rapine, or violence? The Leagues established in 1867 or 1868 did not; but two or three organizations established within the last year or so, in imitation of the Union Leagues and in retaliation for the Ku Klux, did. The Union Leagues, as such, never did, according to any testimony that is reliable, decree the burning of property or the murder of or personal violence to any man. That individual members of it committed wrong there is no doubt; but there is just as clear proof that in all the cases where the members of these organizations have been indicted there has been no trouble in convicting them.

Now, sir, there is one case given in North Carolina of Ku Klux negroes; and as my friend from Delaware says that Caswell Holt came up on all occasions in the testimony, I think he will agree with me that if Caswell's head came up occasionally, the heads of the three negroes who were convicted in Alamance county, the very place where no white Ku Klux can be convicted, came upon the stage, I think, with every Conservative who was on the stand from North Carolina as evidence of Ku Klux among the negroes. It only proves the rule. No member of the white



Ku Klux organization has been convicted of any crime committed by them in North Carolina, down to this hour; and the statement of the Senator from Delaware in his argument to the Senate is, that, so far from there being evidence to convict one, there is not evidence enough against them to bind over a horse-thief. Although we have here one murder proven positively, five men scourged, and one hundred and twenty-seven cases given by name as occurring in various portions of the State, not one white man has ever been convicted, of all those who must have participated in these crimes.

The very appendix that is attached to the minority report to show that there is a negro league for the purpose of burning barns shows that on the 20th of January, 1871, Hon. A. W. Tourgee presiding, a Republican judge, the verdict against these negroes is "guilty." While I am on that subject, another case was testified to before us as occurring in Wake county, where it was said there was some difficulty in convicting negroes, and the trial was removed to the adjoining county. Since I took the floor yesterday a paper has been forwarded to me giving the result of that trial against negroes. I read this as evidence of the public sentiment of North Carolina where negroes are concerned:

"We learn that the barn-burners, whose cases were carried from this county to Chatham and Franklin, were found guilty last week. We understand that the whole seventeen were sentenced to twenty years each in the penitentiary.

"That is pretty heavy, but not a bit too much so. Let these villains understand that the heaviest penalty known to the law will be imposed, and arson and other outrages will soon cease. We believe that too much tender-heartedness by judges sometimes inflicts injury upon the law-abiding public. Give them 'the best you have got in your shop.' Evil-doers will be thus taught to shrink from the commission of crime."

That is the sentiment in a North Carolina paper when negroes are convicted; and yet there are abroad in North Carolina to-day—the language is not too strong—the men who have committed these one hundred and twenty-seven cases, eleven of them murderers; there are abroad in North Carolina hundreds of criminals who deserve just as severe a sentence, and not a man of them has been convicted. The testimony referred to, of Mr. Kerr, on page 10 of the minority report, shows that the disposition of the negroes is peaceable and that they are not disposed to commit these outrages. That of Mr. Ramsey, referred to by the Senator from Delaware, shows that the leagues he spoke of were organized to resent the Ku Klux, and in his testimony on page 12 of the minority report he shows that a member of the Union League who arrested a colored man and brought him before the League for the purpose of trying him because he voted

the Democratic ticket was indicted and convicted for assault and battery on the negro.

Mr. BLAIR. And pardoned.

Mr. SCOTT. And pardoned, I believe. So it is stated. On the subject of pardons, however, Mr. Turner—and I know he has not any very kindly feelings toward Governor Holden—gave us the whole number of pardons communicated in his annual message that were issued for all causes during the period of either one or two years, and it struck me that it was not near as many in proportion to population as are issued by the Governors of northern States.

Mr. BLAIR. The gentleman will admit, then, that there is as much criminality in the northern States?

Mr. SCOTT. Yes, sir; there is as much individual violation of law, perhaps, in parts of the northern States; but is there any case in any northern State that the Senator can point to where there is an organization which decrees murder and whipping and scourging, and in which there can be shown to be one hundred and twenty-seven cases of that character, and not a single man brought to justice?

Mr. BLAIR. I do not know whether there is an organization, as I have not looked into it very closely, in Indiana; but certain persons banded together there, took out certain other persons from jail, and did murder them, and they never have been found and never punished. The same thing is occurring now in the State of Kansas, where the other day eight men were hung, and four of them, who turned State's evidence, were hung by the heels until they were dead. The same thing is occurring now in the State of Nevada.

Mr. SCOTT. Is there any evidence that there exists a regular, sworn organization, whose purpose is to overthrow the reconstruction acts?

Mr. BLAIR. I think it ought to be, if it is not.

Mr. SCOTT. Here we have the sworn testimony that the object of this organization is to overthrow the reconstruction acts.

Mr. BLAIR. That is the only redeeming part of it.

Mr. SCOTT. That is just what the minority report says. It says you must overturn your reconstruction acts or these outrages will go on; that is, the men who rebel against the law must be obeyed and the Government must yield to them. It is mob law announced in high quarters; it is nothing else.

Mr. BLAIR. The first law of that sort was passed in high quarters. The great original Ku Klux was this Congress.

Mr. SCOTT. So I understand. That is the indictment which this minority report charges, that the Congress which enacted the reconstruction acts, and the one which is setting here now, to use the language of your report, "are



guilty of things of which beasts would be incapable and at which fiends would blush." That is the language of the Senator from Missouri, charging the Congress of the United States, in a report intended to whitewash and apologize for the outrages of the Ku Klux in North Carolina. This is not the only place where they are apologized for. On page 162, where these outrages are spoken of, where Mr. Josiah Turner, a Democratic editor, is the subject, and William H. Battle, an honorable and distinguished Conservative gentleman of that State, is the witness, he says:

*Answer.* He lives in Hillsboro, but publishes his paper in Raleigh.

*Question.* In his public utterances, did he apologize for the doings of the Ku Klux?

*Answer.* He did; his paper generally denounces the violations of law by the Ku Klux; but at the same time he intimates that they were prompted by the doings of the Union Leaguers. In that way he may have left the impression that it was some sort of apology.

This is the apology that is sought to be made here. Now, Mr. President, I believe the remedy for this thing is in the hands of the Democratic party in North Carolina; and I enter into this exposition, painful as it is to me, for the purpose of putting them in that position. I believe they have the remedy in their own hands. I believe that if they would follow the example of that intrepid man—he deserves all honor—who, Judge Settle testifies, did step out in Rockingham or Rutherford county—ex-Senator Reid—and boldly denounce the Ku Klux organization. If five prominent men of the Democratic party in every county in North Carolina would follow his example, Ku-Kluxism would hide its bloody head. I enter into this exposition for the purpose of bringing out that fact. I wish to make the Democratic party here to-day disavow all sympathy with the Ku Klux organization; and I wish to say to them that it must not stop with words, but that it must be followed by acts, and that men of the South who would preserve their own rights and the rights and lives of their wives and children must take a decided stand, and not permit it to be proven on the witness stand, as it was proven by Judge Battle, that the only countenance the Ku Klux organization got in North Carolina was from the members of the Democratic party. The Republicans universally denounce it; good men in the Democratic party denounce it; but the only sympathy it got was from the members of that party. I wish to put the responsibility there. That kind of crime cannot live in any State where public sentiment is unanimous against it.

But, to return on the point I was at when diverted by the interruption of the Senator from Missouri. I read from the testimony:

Is there any trouble in executing the law against those who commit theft?

*Answer.* None in the world.

That is in the testimony of Judge Kerr, who showed it could be executed against the negro. Now, to show how these crimes were viewed, instead of giving the general result of anybody's observation, I give a speech made by the very gentleman who has been so highly eulogized by the Senator from Delaware—Mr. Kerr. He says, in giving an account of a speech that he made:

"In that speech, which I addressed to my old constituency, I said in substance this: 'So far as these Ku Klux are concerned I suppose of all men in the world I am most strongly committed against it, and against every other secret, oath-bound, political association. You know that well enough.' I then remarked that one great objection to these Ku Klux I heard urged was that nobody could know who they were. I then made some playful remarks which I suppose were the offensive remarks. After denouncing all such societies, and speaking of their dangerous tendency, I said: 'I have observed one thing in regard to the Ku Klux, that whenever a man behaves himself as he ought to do, if he is a married man, and is found remaining at home with his own wife instead of going off and cohabiting with some colored woman, or if he is not found interfering with his neighbor's pig-pen or hen-roost, he has no very great apprehension of the Ku Klux. But when a man is discovered to be addicted to these vices to which I have referred, forthwith he becomes desperately alarmed for the liberties of his country on account of the Ku Klux.'"

That is the speech made to the very men in the crowd who belonged to the Ku Klux; and that is called denunciation of the Ku Klux, I suppose. It is an apology for it. He spoke "playfully" of such crimes as the murder of Outlaw and the whipping of Caswell Holt, outrages which have so stirred the blood of my friend from Delaware. Outlaw was not a bad man, and yet the Ku Klux hanged him. Holt was not a bad man, and they scourged and shot him.

Another reason is given why these Ku Klux outrages are occurring in North Carolina—the public debt, and the administration of Governor Holden. This is a subject I prefer leaving to the honored representative of North Carolina on this floor; but I wish only to take up enough of the minority report to show that, on the face of it, this is not a question which could have caused these Ku Klux outrages. On page 26 of the minority report the testimony is quoted which shows that all parties passed the legislation which resulted in increasing the public debt. Holden was Governor first in May, 1865, and Worth became Governor in December, 1865. The new constitution was adopted in 1868. As I am informed, and as I know from an examination of the constitution of North Carolina, the Governor has no veto power; a law passed by the Legislature becomes a law without his sanction. So that so far as legislation is concerned, he is not responsible for the inauguration of the public improvements. It is due to the Legislature alone. Now, then, how has this debt originated? On page 26 of the minor-

ity report, in quoting from the testimony of Mr. A. T. Davidson, a Conservative, the following will be found:

*Question.* Were not all parties at the time this legislation took place in favor of internal improvements?

*Answer.* Yes, sir; I think there was no party vote in these appropriations generally, but the result has been disaster to the State in the management of certain parties, and that has produced dissatisfaction. Who is to blame about it I cannot say.

This is from a Democrat and a director in one of these railroad companies. On page 22, Judge Battle, in speaking of Governor Holden says:

*Question.* Was Governor Holden supposed to be privy to this?—

That is, to the acts of Littlefield and Swepson—

*Answer.* For a long time it was believed that he was not. The only thing attributed to him was that he did not look sharply at the matter, fight it and denounce it, but that he rather acquiesced in it; but of late they are beginning to charge him with being a participator in it.

On page 25 we have a history of the whole thing by A. T. Davidson:

*Question.* Who were the other parties engaged in it?

*Answer.* I am a director of the Western railroad. The history of it is this—you remember a great disaster happened to North Carolina bonds in New York. After being offered so very freely, they went down very rapidly. Mr. Swepson sold about half of them, I understand.

That is the Democratic president of a railroad.

He then took a large amount of our funds, and went and bought Florida railroad bonds, and turned everything over to General Littlefield. These were first-mortgage bonds, I think, of the Jacksonville railroad. They exchanged them with the State of Florida for State bonds; and these they have been negotiating in Europe. General Littlefield has just returned from Europe, and all our money has gone into the Florida railroad, so that we have got nothing, while they have got a road in Florida which is covered with mortgages; and we cannot reach it.

Here, then, it is shown all parties originated it, all parties were engaged in it; and on page 23 of the minority report, from which I quote, it is said again that all parties have engaged in denouncing it. What is the history of it? The bonds were issued to the railroad presidents. The Governor had a mere ministerial duty to perform. When the act of the Legislature was complied with, and the State treasurer issued the bonds, all the Governor had to do was to sign his name to them, and he could do nothing else.

Mr. BLAIR. Let me remind the gentleman that the evidence in his impeachment trial discloses the fact that Governor Holden was largely a participant. That charge was preferred, I think, in the ninth article of impeachment. He was impeached on the ground of his complicity with this railroad swindle, and that article was voted, as testified to before

the committee, not only by the Democrats, but by all the white Republicans in the house of representatives, and the statement of the telegraph is that he was convicted upon that article by a vote of forty-one to eight, including four of the Republican senators.

Mr. SCOTT. I only correct the Senator in this much in all the essential particulars of his statement: Governor Holden was indicted upon eight articles of impeachment, all of which referred to the insurrection in Alamance and Caswell counties, and the arrest of prisoners, and paying the militia; and after those eight articles were preferred, and the issue made on them, the house of representatives did pass the article to which he refers by perhaps nearly the vote which he mentioned, but Governor Holden was never tried on that article. No evidence has been given upon it, and he has not been convicted upon it at all.

Mr. BLAIR. He was impeached upon it.

Mr. SCOTT. Moving impeachment and conviction are entirely different matters.

Mr. BLAIR. He was impeached on it by his own friends.

Mr. SCOTT. If that be so it only shows that his own friends would not screen fraud in dealing with railroad bonds, much less in hanging negroes.

Mr. BLAIR. They could not help themselves.

Mr. SCOTT. I wish your friends would have helped justice, for if they had they could have been convicted.

Mr. BLAIR. They had no chance.

THE PRESIDING OFFICER, (Mr. ANTHONY in the chair.) Senators must address the Chair.

Mr. POOL. Will the Senator from Pennsylvania allow me to state how that matter was?

Mr. SCOTT. If it does not take long.

Mr. POOL. There was an effort made originally to put a count in the impeachment articles charging this fraud upon Governor Holden; and I think all of Governor Holden's friends desired that that count should go in, because they were confident it would turn out upon investigation that he was not guilty at all, but that many of the leading Democrats were guilty, and some Republicans, too. So they did not put it in, though they had the power to do so in the house. After the trial had commenced, and the issue had been joined in the impeachment court, then, as it was supposed for effect, the house went to work and got up an amendment to the impeachment articles charging this fraud. The Republicans in the house, certainly all the white Republicans, voted for it. They wanted it in. It passed the house of representatives, as I understood. There was no objection on the part of Governor Holden's counsel to allowing the articles to be amended



in that regard. But, sir, they never carried it into the senate and asked that the amendment should be put in there. The Republicans of the State wanted it there. The Democrats did not dare to put it in. It shows that the action of the house was merely meant for effect, and when they saw no objection was to be made to inserting it they backed down and never carried it to the Senate bar.

Mr. BLAIR. I never heard before that a man's friends would deliberately, in a matter as grave as that, charge him with a deliberate fraud, for the sake of that kind of *finesse* in politics. It shows that Governor Holden's friends must have had very little respect for him, if they could deliberately aid in charging him with fraud for such a purpose.

Mr. POOL. If the Senator from Pennsylvania will allow me one moment further, Governor Holden had been charged in the public prints of the country with this fraud, and his friends desired an investigation in justice to him, and it ought to have been had. It was denied him. But the Senator says here that he was convicted upon it. That is a mistake, which I want to correct. He has not been convicted upon it. He was not tried upon it.

Mr. SCOTT. I only refer to this matter of the public debt because it is urged in the minority report that it was one of the causes why these outrages were committed. Now, sir, this issue commenced in the canvass of 1870. I have shown the period over which these outrages run. I have shown that they originated to overthrow the reconstruction acts, and that they come down beyond the presidential election of 1868. But this issue being made in 1870, and being dragged in here for the purpose of excusing these outrages, let me show what Judge Battle himself says on this subject. After he had been examined at full length in regard to the State indebtedness, this question was put to him:

*Question.* But the Ku Klux organization did not grow out of the extravagance of the State administration?

*Answer.* I do not think it did; but then they were kept up for the purpose of defeating that party.

The Ku Klux organization was kept up "for the purpose of defeating that party," having been originated, as I have already shown. On page 236, and there are other pages to which I shall not refer, this question was asked by Daniel N. Goodloe:

*Question.* Have these questions of prudence in the management or issuing of bonds in any case affected the public peace; has disorder or violence arisen from it?

*Answer.* No, sir, I do not know that it has, except it be a sort of recklessness which it was calculated to produce.

*Question.* Did personal violence result in any case from the feeling engendered from that party contest?

*Answer.* No, sir. I know of one instance, that occurred recently, where Mr. Turner, the editor of

the Sentinel, had made frequent offensive allusions to General Clingman in connection with the matter, and his connection with the "ring," I think he called it. He ridiculed him a great deal, too, in one way and another; and one day near the capitol they had an altercation.

*Question.* That was a personal altercation?

*Answer.* Yes, sir.

*Question.* My question was, did the agitation of that question originate or create violence on one side or the other?

*Answer.* Oh! no, sir!

So that charge disappears; the State debt has nothing to do with these outrages and these disorders in the State of North Carolina.

Mr. MORTON. I should like to ask the Senator this question: in view of the excuse set up for these crimes by reference to the mismanagement of State affairs, I should like to ask if these Ku Klux ever punished any of the persons charged with the commission of any of those crimes?

Mr. SCOTT. My recollection is that the names of the presidents of the different railroads that got these bonds were given; that upon the examination of Mr. Turner, the chief Democratic editor of the State, he had made the impression that Governor Holden had appointed all these presidents. But on cross-examination it turned out that they were appointed by the directors; that the stockholders selected one third of the directors and the State appointed two thirds of them, and that those directors, in selecting presidents, selected three Republicans and three Democrats; that Swepson, the original president of the road, that got the largest amount of the bonds, was a Democrat; that Littlefield, who was associated with him from the North, was a Republican; that General Clingman, who was associated with him, was a Democrat; and that Mr. Davidson, who was one of the directors, was a Democrat; and not a hair of any of them has been harmed by the Ku Klux. So far as the other roads were concerned that got the bonds, two of the presidents were Democrats, three were Republicans. And thus far there is no evidence that a single railroad man has ever been harmed by the Ku Klux in North Carolina for any of the frauds upon the State.

Mr. BLAIR. The Senator will remember that the State has offered a reward for Littlefield of \$5,000; and there is evidence that the Governor of Florida is protecting him against a requisition from the Governor of North Carolina.

Mr. MORTON. I should like to ask the Senator a question in that connection. He says the State has offered a reward for Littlefield. He is the Republican, is he?

Mr. BLAIR. I suppose he is.

Mr. MORTON. Has it offered any reward for those fraudulent Democrats who got the bigger part of the bonds?



Mr. BLAIR. They have Swepson in arrest now.

Mr. SCOTT. They have Swepson in arrest, and he has been held to bail.

Mr. BLAIR. The other man ran away.

Mr. MORTON. And that was done by a Republican Governor.

Mr. BLAIR. The other man being simply a carpet-bagger, and having no interest there, went off, and is now under the protection of the carpet bag Governor of Florida.

Mr. MORTON. That you do not know, I presume.

Mr. BLAIR. I do know it from the testimony.

Mr. SCOTT. Swepson is a Democrat.

Mr. BLAIR. And he is in prison or under arrest.

Mr. SCOTT. Very well. I am stating the fact that Swepson is a Democrat. This State indebtedness is complained of as a monstrous evil, one which is confiscating the means of all the property-holders of North Carolina; and Swepson, a Democrat and a native North Carolinian, is the man who has been the chief instrument in the frauds that have been connected with it. He is on trial before a jury; while Outlaw was a Republican, guilty of no crime, and sixty-five Democrats, without court or jury, hung him to the limb of a tree within forty yards of the court-house door. That is the contrast.

Mr. BLAIR. If the Senator makes statements as reckless as that, asserting that that was done by sixty-five Democrats, I leave it to the country to judge of a man who is so utterly reckless as to make such a statement, about which he knows nothing and can know nothing.

Mr. SCOTT. Mr. President, I will state again that the Democrats of North Carolina are not all Ku Klux, but the Ku Klux in North Carolina are all Democrats, according to the testimony of every man who has testified. That is the distinction; and the Ku Klux did hang Wyatt Outlaw, and the counsel of the Ku Klux, when they were discharged upon writ of *habeas corpus*, Judge Battle himself, testifies to the fact that there can be no doubt on the mind of any living man that the Ku Klux did hang Wyatt Outlaw. That is the distinction of justice in North Carolina now.

I do not wish to be responsible for making such a long speech. There have been so many speeches interjected into my remarks by others that I am occupying longer time than I intended.

The election had this issue thrown into it, the State debt of North Carolina, and that issue, coupled with the intimidation of the negro voters, threw the Legislature into the hands of the Democratic party. The Governor was in the way when the Democratic party got the Legislature. There was a law on the statute-book that made it a penal offense to ride

masked and disguised, and to commit these outrages. There was another that authorized the Governor, when he believed person and property were insecure in any county, to proclaim martial law. I now ask attention to a few dates. By the act referred to, entitled "An act to secure the better protection of life and property," it was provided—

"That the Governor is hereby authorized and empowered, whenever in his judgment the civil authorities in any county are unable to protect its citizens in the enjoyment of life and property, to declare such county to be in a state of insurrection, and to call into active service the militia of the State to such an extent as may become necessary to suppress such insurrection; and in such case the Governor is further authorized to call upon the President for such assistance, if any, as in his judgment may be necessary to enforce the law."

In pursuance of that law, in October, 1869, (and the document to which I refer will be found on page 9 of the documents accompanying the Governor's message; I shall not take up time by reading it,) Governor Holden issued a proclamation with reference to the counties of Lenoir and Jones, stating, after repeating a number of outrages, that he gave—

"Notice in the most solemn manner that these violations of law and these outrages in the aforesaid counties must cease; otherwise, I will proclaim those counties in a state of insurrection, and will exert the whole power of the State to enforce the law."

This was in October, 1869. He did not rush at once to the exercise of this extreme power, when the jail at Kingston, Lenoir county, was opened and three men taken out and murdered. He first issued this proclamation, giving notice that he would exercise this power if these outrages did not cease. Then, remember that on the 26th day of February, 1870, after these outrages had been going on for a long time, Wyatt Outlaw was hung in defiance of justice at the court-house door. On the 7th of March, 1870, just about ten days after Wyatt Outlaw was hung, the Governor issued a proclamation declaring the county of Alamance in insurrection.

What was the limit to his discretion? "When he believed that person and property were insecure in any county." Now, sir, when an armed mob can come at night into the county town and take out the defenseless citizen and hang him at the court-house door, and no man is arrested for it, are life and property secure? In the exercise of his discretion, the Governor issued that proclamation and declared that county in insurrection, and the proclamation closed with offering a reward for the murderers. He sent the militia there. That is the whole head and front of his offending in this matter. He sent the militia there to put down the Ku Klux. That is what he is impeached for; that is what he is convicted for.

Now, suppose he was mistaken, what else is there in it to justify this proceeding of im-

peachment and of conviction? They allege that he transcended the law, that he sent cruel and violent officers there, (Colonel Kirk and Colonel Bergen,) and that those men committed great outrages upon the people of North Carolina. I shall come to that in a moment, for although I do not deem it my duty to take charge of all the witnesses, and of their characters, who come before us, justice to some of them requires that statements made here should be noticed, and I may as well take up that question. George W. Kirk was the colonel of the militia sent there; and the charge is made against him that he is a notorious miscreant, thief, plunderer, and murderer. All the epithets that could be bestowed upon him are given to him.

Mr. President, I have looked at this man Kirk; I have looked at the evidence which is given about him. I am satisfied that he is a stern man and that he is a rough man. He does not make war with kid gloves on. He is an earnest man. In some instances I have no doubt he is a passionate man. But the allegation is that he was a thief and a murderer and a robber during the war. These allegations being made, I took the trouble to inquire into them; and as the Senator from Delaware has stated some things that have been stated to him outside the testimony, I may be permitted to say that since that statement was made upon the floor of the Senate there have been exhibited to me a commission to George W. Kirk from Andrew Johnson, the provisional governor of Tennessee, as a regular officer of the Tennessee troops, and also a regular and honorable discharge of George W. Kirk as the colonel of the second North Carolina volunteers.

Mr. POOL. Of the Federal Army.

Mr. SCOTT. Yes, sir, of the Federal Army; and that is the point I want to come to now. What is the testimony against him? Mr. Kerr speaks of him as a rough, violent man to other prisoners, and his swearing at them; but on page 404, without taking up time to read it, he testifies to the kind treatment of himself by this man Kirk, testifies to his coming in, sitting down along side of him, telling him that he had a wife and children of his own, sympathizing with him, and letting him go home without a guard, saying how he had been misrepresented.

Now, sir, I propose to show from whence the testimony which he says misrepresents him comes. I only wish to get him properly before the country, for it is due to a brave man, even if he is a rough man, that it should be understood where the charge comes from when he is thus assaulted before the Senate of the United States. There are two witnesses who speak of him, Ramsey and Turner, and I think Judge Battle, all of whom refer to the testi-

mony given by a Mr. Cocke in the impeachment trial at Raleigh. Now, for the purpose of showing how this thing originates, let me refer to that impeachment trial and see what was said about him there. These men knew nothing of him personally. They gave what is testified to in the impeachment trial as the foundation of what they say. This is Mr. Cocke's testimony, the one who is referred to. Speaking of Kirk's character, he says:

I suppose I could not better describe it than it was described by the witness who preceded me.

That witness was a Mr. Isaac E. Reeves. What does Mr. Reeves say?

Question. How long have you known George W. Kirk?

Answer. I have known him four or five years.

Question. You did not know him before the war?

Answer. Not personally.

Question. Did you know his character before the war?

Answer. No, sir; I did not know his general character before.

Question. This character that you give him is a character that he acquired during the rebellion?

Answer. During the rebellion or war.

Question. You know nothing about him except what occurred in his conduct during the war?

Answer. Well, I don't know that I could answer that affirmatively. I have heard of some—

Question. I speak of his general character.

Answer. No, sir.

Question. I ask you if he was a United States officer?

Answer. Yes, sir; I understood that he was colonel of a regiment in the Federal service.

Question. When you speak of this man being desperate and remorseless you mean with reference to the character he acquired during the war?

Answer. Yes, sir; during the war. Since the war I do not know of any outrageous acts at all. His behavior, as far as I have seen, has been that of a comparatively quiet citizen, except—

Question. A quiet citizen?

Answer. Except a few months when he was in the militia service. He made some reputation during that time for cruelty.

Question. There were very difficult times over there?

Answer. Yes, sir; rather turbulent times.

Question. All you heard of him in respect to his character referred to when he was in the service?

Answer. Yes, sir; when he was in the service.

Re-direct examination.

By Mr. Merrimon:

Question. You say that he was in the militia service after the war?

Answer. Yes, sir.

Question. What was his reputation as a militia officer there?

Answer. It accorded very well with his reputation during the war while he was in the Federal service, except that I do not know of murders perpetrated. I know he was a terror of the people of Middle Tennessee. I mingled with them a good deal there while he was in the service.

That will be found on pages 276 and 277 of the impeachment trial, and on pages 285 and 286. Both the gentlemen who gave this testimony admitted that they were on the rebel side during the war, while Colonel Kirk was a colonel in the Federal service, and "he was the terror of the people of Middle Tennessee." I think, perhaps, I could mention the name



of a man who was the terror of all this region around the capital, and I suppose he claims to be a gentleman, and I think he has aspired to the dignity of having a biographer. Colonel Kirk was in the Federal service, did his duty, and was honored by the people of Middle Tennessee. Making all allowance for his rough character, (for he is a rough man,) we are to consider where this testimony has come from before we condemn him upon the testimony which has been given here of cruel conduct by him. You have heard from the lips of the Senator from Delaware the statements that are charged against him.

I was struck with the allegation of the Senator from Delaware that he had caught the name of George W. Kirk in a bill that was introduced by somebody, and he wanted to convey the idea that it was for these services he was to be compensated. I had the curiosity to go and look at the bill, and I find that it was introduced by the Senator from Tennessee [Mr. BROWNLOW] to compensate him (Kirk) for raising troops for the Federal service. I know that the Senator from Tennessee is not in the habit of introducing bills for compensation to people who fought on the wrong side. So much for that.

I was struck again at the fact that the people who make these complaints are the men who were charged with being members of the Ku Klux organization. How likely they would be to complain of the acts of the colonel who was sent there. Look at it. Here were thirty or forty of them arrested as Ku Klux. One of them was before us, Lucian Murray. He testifies that of all the men who were confined with him all but three or four admitted to each other that they were Ku Klux. He also admits that when asked whether he was one he denied it. He is the man who complains of Bergen; others complain of the acts of Kirk. The associates of these men—I will not say these men who were arrested, for I do not know that, but the associates of these men had hung Wyatt Outlaw, had whipped Caswell Holt, had whipped Alonzo Corliss, had whipped Ramsour, had whipped a revenue officer; and yet, although they took the law into their hands to hang and to murder and to prevent the execution of the laws of the United States, when a militia officer comes among them they must be treated like gentlemen!

Why, sir, it carried me back to the history of the whisky insurrection when one George Washington was in command of the militia ordered to western Pennsylvania. I sent to the Library for a history of the whisky insurrection written by a descendant of one of the men who were charged with having somewhat to do with it, for the purpose of showing how men may by their feelings be influenced in regard to the conduct of militia sent to thwart

their purposes. I send to the desk and ask the Clerk to read the two passages which I have marked on pages 267 and 268.

The Chief Clerk read as follows:

"The troops from Pennsylvania and New Jersey were ordered to march to Carlisle previous to proceeding to Bedford; and those from Maryland and Virginia were to rendezvous at Cumberland on the Potomac. The command of the whole was given to General Lee, then Governor of Virginia. The different corps, drawn freshly from the people, were composed of very different materials, the greater part without discipline, and, of course, under very imperfect subordination. A large portion of those from Philadelphia and the adjacent county were hired substitutes, the very worst kind of military mercenaries, actuated by no higher motive than the expectation of plunder, and the bounty and pay held out as inducements. The militia generally, who served in their classes, were actuated by better feelings, and restrained by worthy motives. The Jersey volunteers and militia are spoken of more favorably; they were under the command of Governor Howell, while the Pennsylvania troops were commanded by Generals Irvine and Chambers. Those of Maryland were under General Smith, and the Virginia troops under General Morgan."—*Brackenridge's History of the Western Insurrection*, page 267.

"A very large proportion of the recruits, especially the hired substitutes, were greater ruffians than the worst of those who had taken part in the insurrection. Two men were assassinated by them; one on the road near Lebanon, and the other near Carlisle; the first by the New-Jersey troops, on some slight provocation; the other by a light-horseman of Philadelphia, who went into the country to seize some persons suspected of assisting to raise a liberty pole! The latter was a sick boy, who was flying from the guardians of the law, and shot, as it is said, accidentally."—*Ibid.*, p. 268.

Mr. SCOTT. Thus, it will be seen, Mr. President, that complaints against the conduct of militia troops ordered to put down insurrections are not new in the history of the country; and "gentlemen" who, by their silent acquiescence or active participation, have countenanced murder and whipping and scourging, ought to be a little slow in complaining if they are not furnished with parlors and kid gloves when they are taken prisoners under the operation of military law, made necessary by such a state of things.

This, then, is the complaint, one of the justifications that are given here; that after the occasion had arisen for proclaiming martial law, the wrong men were sent to put it down. Let that go for what it is worth. It is for that Governor Holden has been impeached; it is for that he has been convicted; and there is testimony given here to warrant the belief that the man who prepared the articles of impeachment against him, and who moved them in the house of representatives is a member of the Ku Klux Klan. On page 26, on page 143, and on page 87, of the testimony are statements made, clearly stating that Strudwick, the man who prepared the articles of impeachment, is a member of that Klan. Looking at the character of the oath, at the manner in which its members view it, at what they have already done, who could doubt the result of the im



peachment, founded upon Governor Holden's conduct in putting down the Ku Klux Klan, if there are more members of it in the Legislature than that one? I do not say there are, for I do not know; but it is a reasonable presumption that there are.

What is the result? It is a proclamation to the Ku Klux of North Carolina that there will be no more martial law for such outrages as these. Suppose they did cease comparatively from August of last year, what would be the explanation of it? Willeford gave the explanation of it. They have the power they sought for. But to guard against all contingencies they repealed the law which made it an offense to go masked; they repealed the law which authorized the declaring of a county in insurrection; and even if there be Ku Klux outrages in the future, they can neither be indicted for it under that State law nor punished by military law. So that they have secured impunity and proclaimed it to the State by the impeachment of Governor Holden. What the future may bring forth it is not for us to say. I shall rejoice if my fears on that subject be not realized.

Having gone over these grounds, I feel that I ought to draw what I have to say to a close, for my strength will not enable me to go on and discuss, as I should like to do, the attacks that have been made on the character of the witnesses or the proposed remedies for these evils. I must be brief on both those subjects.

I have already incidentally noticed the charges against Holden, Kirk, Bergen, and W. R. Albright; but I must say a word or two with reference to this man Boyd, whose testimony has been attacked as unsupported, and against whom there seems to be a desire to make a crusade. That man struck every one, I think, who heard him testify as a clear-headed, well-disciplined young lawyer. He is, I suppose, about thirty years of age, from his appearance. He was a candidate on the Democratic ticket for the Legislature in July, 1870, when the military were ordered into Alamance county. Every man who has been examined who knew him without exception testified to his good character. There is not a man who says he did not stand well as a citizen and as a lawyer. And now, with a character made good during a life of thirty years among the people with whom he lived, the only thing that is charged against him is that when the military came into that county to enforce martial law he signed that confession and made the disclosure of the existence and purposes of the Ku Klux Klan.

But, sir, another charge is made here. It is now alleged that he was bribed, and that he had the bribe in his pocket. It is in evidence that after these arrests were made Governor Holden did retain him and pay him a fee of \$250 to assist in the prosecution of the men

who were arrested. That Governor Holden paid it to him before he made this statement and confession there is no evidence whatever; and if there were, does my friend from Delaware, who complains of the corruption of the Radical Legislature of North Carolina, and of the indignation caused by it, come here to proclaim that the price of Democratic candidates for the Legislature of North Carolina is \$250 a head? Is that the way you rate them down there? No, sir; he was above bribery, and to this day there is not a man who urges anything against him but the disclosure he has made against this wicked organization. He is not a common informer. He is not prosecuting a *qui tam* action, as the Senator from Ohio [Mr. THURMAN] would seem to intimate when he brands him a common informer to recover and share a penalty. He has made a disclosure which has brought upon him the social ostracism of the Democratic party of the county in which he lives; and if there was a doubting Thomas on that subject, he would not doubt after listening to the argument of the Senator from Delaware and the malediction of the Senator from Ohio upon this man as a common informer. That is the fate the man must meet who opposes this organization in that atmosphere.

There are other witnesses. All the judges, all the revenue officers and other witnesses, are bundled together in this minority report and characterized as men who are not worthy of belief; and they say that the majority of the committee have found this state of things existing in North Carolina against the testimony of respectable men and on the testimony of men who are not entitled to belief. There were six of the judiciary of North Carolina before the committee. I know the charge is made against them by Josiah Turner that they were corrupt. He charged them all with being corrupt; he made a wholesale charge; and yet a reference to the testimony will show that when he is brought down to details, and taken over the whole twelve judicial circuits of the State, man by man, he excepts ten of them from the charge, and said the other two were corrupt because they would not give him bench warrants when he wanted them. So I must say that the charge here is a little like that of Josiah Turner against the judiciary of North Carolina. If further refutation were needed it is found in the statement made in the minority report that life and property are as secure in that State as anywhere in the North, for they never can be secure in a State where there is a corrupt judiciary.

I look for a moment at the number of cases that are given as showing this state of disorder in North Carolina. There are one hundred and thirty-two by name in the list given, twelve of which are murders. There are numerous

others that cannot be given by name. I do not wish to conceal the fact that in the state of terror that exists among many of the witnesses in North Carolina it would be singular if there was not some exaggeration in regard to the atrocity of reputed offenses. I suppose there is. But when names and dates are given there can be no allegation that the offenses have not been committed. I know my friend from Delaware made an argument that the absence of conviction gave rise to the inference that the cases did not exist. It reminded me very much of old Squire Holt's explanation of the Ku Klux to Caswell, that it was a mystery, "a kind of resurrection," when the Senator said that one hundred and thirty-two cases proved by name and no conviction rather gave the inference that no cases existed to be tried.

The Senator says, why do you not remove your cases? Well, sir, they might be removed to another circuit, before another judge, before another jury; what becomes of the witnesses who are to stand in solid phalanx around their sworn confederate when he is charged with crime? There is the testimony of Willeford that they are bound to stand by him in the jury-box, bound to stand by him on the witness-stand, and acquit in one place or the other. Diminish this list if you can. Raze down the horrible catalogue as much as you can. I wish it could all be blotted from the history of our country. It is a foul stain upon its annals that ever in any State one hundred and thirty-two citizens could be shot, scourged, and murdered, and no offender brought to justice. I wish they could be blotted out; but there it is and will remain, a foul blot upon the history of the land.

The statement was made that all these outrages were committed eighteen months ago. My friend from Delaware was mistaken in that. Some witness did state that there had not been any in one county for the last eighteen months; but, sir, the list which I have given brings down offenses to February, 1870, a year ago, and the testimony shows that while the committee was sitting and examining witnesses outrages of this character were being committed in some portions of North Carolina.

This, then, is the evil. Here is a banded, secret, sworn organization for a political purpose; and that political purpose is carried out by crime.

Now, Mr. President, comes the question, What remedy are we to apply to it? This is the troublesome question. The resolution contemplates instruction to the Judiciary Committee to bring in a bill. My views may be different from those of other Senators on this subject; I entertain them honestly, and I cannot but express them, although they shall not be at any length, because I do not wish to enter into such a discussion before any bill is reported.

Starting with the civil rights bill, what have we? We have the declaration that all persons born in the United States are citizens of the United States and entitled to all their civil rights in every State and Territory; that the deprivation of any of these rights shall be a cause of action in the United States courts in any case, civil or criminal, where a remedy is denied or cannot be enforced in the State courts. We have the right given to the circuit courts to appoint any number of commissioners that may be necessary to carry it out. We have the right given to the marshals to call upon the Army and Navy to assist them in executing process, and the right given to the President to use the Army and the Navy and the militia, not simply to execute the law, but to prevent its violation.

The statutory rights conferred by the civil rights act in 1866 were made constitutional rights by the adoption of the fourteenth amendment. We have power to carry that out by appropriate legislation. If there be any doubt about the validity of the civil rights act or the enforcement of its remedies, in consequence of the intervention of the constitutional amendment between that date and this, it is reenacted by the act of the 14th of July, 1870, and a sixth section put in which would cover any description of offense against the rights of any citizen of the United States.

We have on the statute-book a law passed within ten days of the battle of Bull Run to punish all conspiracies and seditions that are formed for the purpose of resisting the laws or Government of the United States.

We have all these. And with all these, what are you to do with an organization that skulks abroad at night in disguise, and has succeeded in committing such a list of cases of murder and whipping in one State, and prevented a single man of their organization from being punished by a court of justice? Let it not be said this is the fault of the Executive or of the judiciary. Darkness and disguise cover their deeds; identification is difficult; and when attempted organized perjury strikes down the arm of justice. What are you to do with it? What is it? Is it not armed insurrection? Is it not domestic violence, when seventy-five men of such an organization ride out with arms in their hands and hang a man before the courthouse door? What will you say it is? All history teaches us that when great crises are coming upon us we are too slow to appreciate the magnitude of the evil. There stands that law on the statute-book, of the 31st of July, 1861, against conspiracy and treason; and although there have been half a million traitors in arms since that date, not a man has ever been convicted under it in a court of justice in this country. It attests the importance of penal statutes to arrest a running tide of treason.



Over-violent laws against a precedent have always failed. I think it was the 21st Richard II which enacted that even the intent to depose or to kill the king should be high treason without an overt act; and in two years after the act was passed Richard II was both deposed and murdered. No, sir; the truth is this: in North Carolina forty thousand, according to estimate—it may be too much or it may be too little—but certainly many thousands of the men who were in the rebel army, wearing the rebel gray, are now at night in the camp of the Ku Klux Klan, with the design of overthrowing the reconstruction acts and disfranchising the negro. And we cannot shut our eyes to the fact that if the opportunity offers the coiled serpent is ready to strike. There is the testimony of a witness on the stand, who says that the subject has been discussed in their camps, that if we get into a foreign war they will strike us in the back. That was the language of Willeford. There is the intent. And if we believe it, if we believe that the coiled serpent is there ready to strike, the heel of power must be sufficiently shod to bruise its head when it comes to light.

Mr. DAVIS, of Kentucky, (in his seat.) Yes, there it is again.

Mr. SCOTT. Yes, sir; it is coming exactly to that.

We did not believe in 1861, I could not believe in 1861, that there were men in this land who would marshal forces which would meet the armies under the flag of the United States within ten miles of the capital for the purpose of destroying this Government. The Senator from Kentucky did not believe it, sir; no man here believed it; and we are slow to believe now that there are forty thousand men in North Carolina sworn under oaths to overthrow the reconstruction acts and to disfranchise the negro, and to do it by murder and blood and violence; and yet here are these men who swear to the existence of such an organization.

Mr. BAYARD. What proof is there that there are forty thousand?

Mr. SCOTT. The Senator from Delaware asks me what proof there is of there being forty thousand. Boyd says he had information from men in the organization that there were forty thousand. Willeford, who came in later than Boyd, says the commander of that camp told him there were sixty thousand.

Mr. BAYARD. Both speaking on hearsay; and the Senator makes that allegation!

Mr. SCOTT. Both speaking on hearsay, but hearsay from whom? These men were privates in the camp, and the hearsay is the statement of the commanding officer of the camp. And more than that, as you call it to my mind, the commanding officer of one of the subordinate camps in the county of Alabama, where these three negroes were con-

victed, and where white Ku Klux cannot be convicted, is the sheriff of the county, and every deputy in the county is a member of the Ku Klux Klan. These are men of intelligence who would be likely to know the numbers of their brotherhood. These are facts which cannot be denied. They are before us. We are blind to our duty if we do not look them squarely in the face and meet them.

It is not wise to fire blank cartridge into the mob. I am willing to go to any constitutional length that we can to intrust the Executive with power to meet this emergency when it arises. I pray God it may not arise; but I think we ought to be ready for it if it comes. I wish that I could close my eyes to this disagreeable truth. It has been forced upon me. Placed on a committee where it was my duty to investigate this subject, slowly, reluctantly have I come to this conclusion; but, as I love my country, as I love its laws, as I love the perpetuation of its liberties, I cannot close my eyes to the true state of facts, and I cannot close my remarks without warning my fellow-countrymen against the danger that I believe to be impending. It is not in North Carolina alone. South Carolina is warned that her Governor must flee. In one county her officials have, at the dictation of the mob, laid down their offices. The Senator from California [Mr. CASSERLY] interposes to ask me—

Mr. CASSERLY. The Senator will excuse me. I did not mean to interrupt him. I did not address myself to the Senator.

Mr. SCOTT. I supposed the interrogatory was addressed to me.

Mr. CASSERLY. It was addressed to the Senator from Delaware by my side.

Mr. SCOTT. The inquiry is as to the proof. There was no proof of that before the committee, for it has occurred since the committee reported. I have only the information which every other man has from the public press that this has occurred, except that I had a conversation last night with a gentleman from South Carolina who says it is true.

Mr. CASSERLY. I have to apologize to the Senator for speaking inadvertently in so loud a tone as to make him suppose I addressed my question to him. But as I have no doubt he has already excused me for that, I desire to suggest to him whether upon such a subject a gentleman in his position ought to make a statement about South Carolina which rests on somebody's report, and that a statement so serious.

Mr. SCOTT. Mr. President, I make the statement in just the manner I received it. It is in every newspaper in the land this morning. The Senator has seen it; he has equal means of information with me. When I, as the chairman of this committee, have before me the sworn evidence of what exists in North Carolina, when



I have from a witness the fact that he traveled in South Carolina, and that the order does exist there and extends through the South; when I see in the public prints accounts of similar outrages occurring in South Carolina with those sworn to before this committee, I must believe that like causes produce like effects; and slow as I am to believe that there is a design to overthrow these State governments by these instrumentalities, that disagreeable truth is being forced home upon every man. I could not close my eyes to it, and I think it is my duty here to give this warning. If it falls unheeded and we find a greater struggle before us in a few months than we anticipated, it will only be repeating the experiences of the past. If the fear prove unfounded, or the warning avert the danger, no one will rejoice more than I.

But, sir, duty must be met. I have no desire to overdraw this picture. If I could, by stretching forth my hand over these southern States, restore them all to peace and quietude, stop this disorder, no man would more willingly do it. All the feelings of my heart go out in the warmest desire for the peace and security of the South. Brothers of my own blood are there, and I would be recreant to all the dictates of duty, as well as of humanity, if I

said one word that was calculated to give a wrong impression as to the true state of affairs. I do not wish to do it. I wish to see the honest men, the true men, of the Democratic party in the South stand up in the front, as ex-Governor Reid did, and stay the waves of this seething mob, lest ere long their own homes and hearth-stones be buried in the general anarchy that must ensue. We want not the government of the mob in this land. We want a Government in which the law will be supreme, in which (quoting the thought of another, for I have not his language) supreme justice will moderate the whole tone and tenor of public morals. Justice is the object at which all Governments should aim. Justice is at once the brightest emanation of the Gospel and the greatest attribute of God. It teaches the lofty that he cannot sin with impunity. It teaches the lowly that the law is at once his protection and his right. And I trust that before this Congress rises, if we can do nothing else, we shall put some law on the statute-book which shall satisfy the people of this land and of the world that we wish again, instead of disorder and strife, to inaugurate the reign of that supreme justice which introduces order and peace and love into a world which but for her would be a wild waste of passion.









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SPEECH  
OF  
HON. JAMES F. SIMMONS,  
OF RHODE ISLAND,  
ON  
THE STATE OF THE UNION.

DELIVERED IN THE SENATE OF THE UNITED STATES, JANUARY 16, 1861.

The Senate being in Committee of the Whole on the state of the Union, and having in consideration the amendment offered by Mr. CLARK to the resolutions of Mr. CRITTENDEN, Mr. SIMMONS said:

Mr. PRESIDENT: I intimated yesterday, that when this question came up again I desired to submit a few remarks to the Senate; and I do not know but that it is as well to do so on the amendment as on the original proposition. I am opposed to the amendments of the Constitution proposed in these resolutions; but before I proceed to point out the particular objections to these amendments, I will try to explain what I understand to be the Constitution we now have.

The Senator from Texas, (Mr. WIGFALL,) the other day, in some remarks to the Senate, said that when this Constitution was framed, by the aid of Connecticut, seconded by Mr. Paterson, of New Jersey, the framers of the instrument were prevented from making it a national system, and through the aid of Connecticut and New Jersey, made it a federative system. I do not intend to argue that question, whether or not, at this day, we are living under a Confederation or a Constitution; but I will state the proposition as made in the convention upon which he based this declaration, and I ask my friend and colleague—as he can see better than I can, and also read a great deal better—to read this debate. There are several pages of it. I think it explains more clearly than I could what the fathers intended this instrument to be. The proposition was this: Mr. Ellsworth moved that it be referred to the Legislatures of the States for ratification; Mr. Paterson seconded the motion; and here is the debate upon it, which I shall make a part of my speech.

Mr. ANTHONY read, as follows:

“Mr. ELLSWORTH moved that it be referred to the Legislatures of the States for ratification.

“Mr. PATERSON seconded the motion.

“Colonel MASON considered a reference of the plan to the authority of the people as one of the most important and essential of the resolutions. The Legislatures have no power to ratify it. They are the mere creatures of the State constitutions, and cannot be greater than their creators. And he knew of no power in any of

their constitutions—he knew there was no power in some of them—that could be competent to this object. Whither, then, must we resort? To the people with whom all power remains that has not been given up in the constitutions derived from them. It was of great moment, he observed, that this doctrine should be cherished, as the basis of free Government. Another strong reason was, that, admitting the Legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding Legislatures, having equal authority, could undo the acts of their predecessors; and the national Government would stand, in each State, on the weak and tottering foundation of an act of Assembly. There was a remaining consideration of some weight. In some of the States the governments were not derived from the clear and undisputed authority of the people. This was the case in Virginia. Some of the best and wisest citizens considered the constitution as established by an assumed authority. A national constitution derived from such a source would be exposed to the severest criticisms.

“Mr. RANDOLPH. One idea has pervaded all our proceedings, to wit: that opposition, as well from the States as from individuals, will be made to the system to be proposed. Will it not then be highly imprudent to furnish any unnecessary pretext by the mode of ratifying it? Added to other objections against a ratification by the legislative authority only, it may be remarked that there have been instances in which the authority of the common law has been set up in particular States against that of the Confederation, which has had no higher sanction than legislative ratification. Whose opposition will be most likely to be excited against the system? That of the local demagogues who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those he brought with him into the convention. It is of great importance, therefore, that the consideration of this subject should be transferred from the Legislatures, where this class of men have their full influence, to a field in which their efforts can be less mischievous. It is, moreover, worthy of consideration, that some of the States are averse to any change in their constitutions, and will not take the requisite steps unless expressly called upon, to refer the question to the people.

“Mr. GERRY. The arguments of Colonel Mason and Mr. Randolph prove too much. They prove an unconstitutionality in the present Federal system, and even in some of the State governments. Inferences drawn from such a source must be inadmissible. Both the State governments and the Federal Government have been too long acquiesced in to be now shaken. He considered the Confederation to be paramount to any State constitution. The last article of it, authorizing alterations, must consequently be so as well as the others; and everything done in pursuance of the article must have the same high authority with the article. Great confusion, he was confident, would result from a recurrence to the people. They would never agree on anything. He could not see any ground to suppose that the people will do what their rulers will not. The rulers will either conform to or influence the sense of the people.

“Mr. GORHAM was against referring the plan to the Legislatures. 1. Men chosen by the people for the particular purpose will discuss the subject more candidly than members of the Legislature, who are to lose the power which is to be given up to the General Government. 2. Some of the Legislatures are composed of several branches. It will consequently be more difficult, in these cases, to get the plan through the Legislature than through a convention. 3. In the States many of the ablest men are excluded from the Legislatures, but may be elected into a convention. Among these may be ranked many of the clergy, who are generally friends to good government. Their services were found to be valuable in the formation and establishment of the constitution of Massachusetts. 4. The Legislatures will be interrupted with a variety of little business; by artfully pressing which, designing men will find means to delay from year to year, if not to frustrate altogether, the national system. 5. If the last article of the Confederation is to be pursued, the unanimous concurrence of the States will be necessary. But will any one say that all the States are to suffer themselves to be ruined, if Rhode Island should persist in her opposition to general measures? Some other States might also tread in her steps. The present advantage, which New York seems to be so much attached to, of taxing her neighbors by the regulation of her trade, makes it very probable that she will be of the number. It would therefore deserve serious consideration, whether provision ought not to be made for giving effect to the system without waiting for the unanimous concurrence of the States.



"MR. ELLSWORTH. If there be any Legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents, and pursue such a mode as would be competent. He thought more was to be expected from the Legislatures than the people. The prevailing wish of the people in the eastern States is, to get rid of the public debt; and the idea of strengthening the National Government carries with it that of strengthening the public debt. It was said by Colonel Mason, in the first place, that the Legislatures have no authority in this case; and in the second, that their successors, having equal authority, could rescind their acts. As to the second point, he could not admit it to be well founded. An act to which the States, by their Legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself. As to the first point, he observed that a new set of ideas seem to have crept in since the Articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congress applied on subsequent occasions for further powers? To the Legislatures, not to the people. The fact is, that we exist at present, and we need not inquire how, as a Federal society, united by a charter, one article of which is, that alterations therein may be made by the legislative authority of the States. It has been said that, if the Confederation is to be observed, the States must unanimously concur in the proposed innovations. He would answer that, if such were the urgency and necessity of our situation as to warrant a new compact among a part of the States, founded on the consent of the people, the same pleas would be equally valid in favor of a partial compact, founded on the consent of the Legislatures.

"MR. WILLIAMSON thought the resolution (the nineteenth) so expressed as that it might be submitted either to the Legislatures or to conventions recommended by the Legislatures. He observed that some Legislatures were evidently unauthorized to ratify the system. He thought, too, that conventions were to be preferred, as more likely to be composed of the ablest men in the States.

"MR. GOUVERNEUR MORRIS considered the inference of Mr. Ellsworth from the plea of necessity, as applied to the establishment of a new system on the consent of the people of a part of the States, in favor of a like establishment on the consent of a part of the Legislatures as a *non sequitur*. If the Confederation is to be pursued, no alteration can be made without the unanimous consent of the Legislatures. Legislative alterations, not conformable to the Federal compact, would clearly not be valid. The judges would consider them as null and void. Whereas, in case of an appeal to the people of the United States, the supreme authority, the Federal compact may be altered by a majority of them, in like manner as the Constitution of a particular State may be altered by a majority of the people of the State. The amendment moved by Mr. Ellsworth erroneously supposes that we are proceeding on the basis of the Confederation. This convention is unknown to the Confederation.

"MR. KING thought with Mr. Ellsworth, that the Legislatures had a competent authority, the acquiescence of the people of America in the Confederation being equivalent to a formal ratification by the people. He thought with Mr. Ellsworth, also, that the plea of necessity was as valid in the one case as in the other. At the same time he preferred a reference to the authority of the people, especially delegated to conventions, as the most certain means of obviating all disputes and doubts concerning the legitimacy of the new Constitution, as well as the most likely means of drawing forth the best men in the States to decide on it. He remarked that, among other objections made in the State of New York to granting powers to Congress, one had been that such powers as would operate within the States could not be reconciled to the Constitution, and therefore were not grantable by the legislative authority. He considered it as of some consequence, also, to get rid of the scruples which some members of the State Legislatures might derive from their oaths to support and maintain the existing constitutions.

"MR. MADISON thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State constitutions; and it would be a novel and dangerous doctrine that a Legislature could change the constitution under which it held its existence. There might, indeed, be some constitutions within the Union which had given a power to the Legislature to concur in alterations of the Federal compact. But there were certainly some which had not; and, in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the Legislatures

only, and one founded on the people, to be the true difference between a league or treaty and a constitution. The former, in point of moral obligation, might be as inviolable as the latter; in point of political operation, there were two important distinctions in favor of the latter; first, a law violating a treaty ratified by a pre-existing law might be respected by the judges as a law, though an unwise or perfidious one. A law violating a Constitution established by the people themselves would be considered by the judges as null and void. Secondly, the doctrine laid down by the law of nations in the case of treaties is, that a breach of any one article by any of the parties, frees the other parties from their engagements. In the case of a union of people under one constitution, the nature of the fact has always been understood to exclude such an interpretation. Comparing the two modes, in point of expediency, he thought all the considerations which recommended this convention in preference to Congress, for proposing the reform, were in favor of State conventions in preference to the Legislatures for examining and adopting it.

"On the question, on Mr. Ellsworth's motion, to refer the plan to the Legislatures of the States—

"Connecticut, Delaware, Maryland—aye, 3.

"New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia—no, 7."—*The Madison Papers; Containing Debates on the Confederation and Constitution. Supplement to Elliott's Debates, vol. 5; pp. 352, 353, 354, 355, 356.*

\* Mr. SIMMONS. Mr. President, that explains what the framers of this Government intended it should be; and yet men will refer to that very question there decided—seven against it, and three for it—and say that that decision was in favor of making a *confederation*, instead of a *national Government*; and every argument that has been made on the opposite side of the Chamber has treated this Constitution as if it were a league or treaty. A compact broken in one part is broken in all parts, said Mr. Webster. I agree with that; but did he ever say this Constitution was a compact? Never; never; on the contrary, he expressly denied it. Quotations are made from eminent men, who make speeches either to get votes or to get nominations, and are adduced here as constitutional authority. I read this very debate and another here fourteen years ago, in the presence of the Senator from Virginia, (Mr. MASON.) I read what that gentleman's distinguished ancestor said on this constitutional question. I read it, too, upon another portion of this subject that I shall call his attention to. Every Senator who has made an argument upon this question in favor of the right of a State to secede, has based it upon the argument, and solely upon the argument, that the Constitution is a treaty, and not a *CONSTITUTION*. I agree that a treaty which is broken in one part is broken in all, and frees everybody. That was Mr. Madison's doctrine; but he said that a constitution formed by the people is not a compact, but a *pact* that excludes such an interpretation. Yet, everybody on the other side says it is a compact; and the distinguished Senator from Texas says that the old men who made this Constitution, of all things in the world, knew nothing about it; that they were very good men for generals, and such like, but knew nothing about the Constitution. Well, sir, they are good enough authority for me. I would rather read their authority than any other. I make no argument upon it.

I call the attention of the Senator from Virginia to what he said this morning about referring these resolutions to the people. He said he was against letting the people vote on them. His distinguished ancestor said he held it of the first importance, that this Government should rest on the will of the people; but it has got to be unfashionable now; the people are not to be trusted in this age. I have as abiding faith in them now as the fathers had when they made this Constitution; and how did they come



out? Look at your seventy years' experience under this Constitution. Did they trust the people in vain? I hope not, I know they did not. It was the faith of the fathers. Let us live by it, and stand by it. But I shall be tedious if I go into that debate; and therefore dismiss it.

Mr. MASON. Will the Senator allow me to interpose a word?

Mr. SIMMONS. Certainly.

Mr. MASON. What I said implied no distrust of the people whatever. What I said referred entirely to the theory of this Government. This Government, as I understand, is a confederation of States; and when the people are spoken of in the Constitution, it means the people of each State *separatim*, as a separate independent political community, each State being sovereign. Now, I understand the scope of this resolution is to refer a question of constitutional amendment, not to the States or to the people of the States, as separate independent political communities, but to refer it to the people of all the States as a general mass. I say that the Constitution never contemplated that the people of the United States, as a mass, a homogeneous mass, should be the parties to the Federal Government; and therefore, without any distrust of the people in their separate States, I never can agree to convert the form of government we now have, from a confederation of Republics into a consolidated Government. And, interrupting the Senator for a moment longer, I would refer to the fact, that when the Constitution contemplates amendments to be made to it, they are amendments to be made to it by the States, as States, either by their Legislatures or by conventions, as may be arranged; but in each instance the amendments are to be made by States, and those amendments would not be carried by a popular vote, but each State would give one single vote and one only upon the amendments. The State which the honorable Senator represents, with its population, would give a vote equal to the State represented by the Senator from New York—a single vote. There was no idea of referring it broadcast to the people, as a consolidated mass. That is all I wish to say.

Mr. SIMMONS. I did understand the Senator to make the objection. If I read these resolutions aright, these amendments are to be adopted if they are approved of by the people of three-fourths of the States, each State having one vote. That is the way I read them. One of them, I am pretty sure, says so. I read it yesterday. I agree that the Senator is right in saying that the amendments are to be referred to the people of the States, and that the original proposition was made to the people of the States; and why? Because this Constitution took from the State authorities many of the powers that the people had given to their State Legislatures; and they were not going to have a mass meeting, and let the people of Virginia take away the rights that had been given by the people of South Carolina to their State Legislature. It must be the same constituent body that granted these rights to their State government, that should take them back again and grant them to this Government. That is the distinction. Nobody was competent to take away the rights of the Legislature of Rhode Island but the people of Rhode Island, and so it is with all the rest of the States. That is the reason, and the only reason, that this Constitution was sent to the people of the States; not because it was a *confederation*, as the Senator reiterates again to-day, but, because powers were given in the Constitution to the national Government that could not be taken from the States by anybody but those who gave those powers to the State Legisla-



tures; and they took those powers from the States in ratifying this Constitution, and gave them to the national Government. I have no doubt the Senator from Kentucky, in his resolutions, has provided the same mode that is pointed out in the Constitution, to let the people vote in each State for or against these amendments. Am I mistaken in that?

MR. CRITTENDEN. The resolutions which I offered provided no means of that sort; but the Senator from Pennsylvania (MR. BIGLER) has been so good as to introduce a bill here prescribing the mode in which the vote shall be taken, as it was taken at the presidential election, and by the same officers.

MR. SIMMONS. I have seen it somewhere in the printed proceedings. That would certainly be the way. There is no other way to do it under the Constitution. Every suggestion, every argument made use of by every man who spoke in this debate in the Convention as to whether the Constitution should be ratified by the Legislatures or by the people, no matter whether they were in favor of a Confederation or in favor of a national Government, furnishes a complete answer to all the arguments that have been brought up here in favor of the right of a State to secede. Mr. Ellsworth, as much of a Federalist as he was, denied that right even under the confederation and every national man from that time down has always denied it.

MR. President, having disposed of that question, so far as I choose to speak on it in this connection, I come to the provisions for its amendment; and I have to say to my worthy and distinguished friend from Kentucky that I consider his plan grossly violative of the Constitution itself. He knows that I speak of it kindly; but I cannot in my conscience believe otherwise than I have stated. I know these troubles. I feel as much regret as I know he feels at such unwarrantable troubles brought upon us from so trifling causes, as I conceive; but I cannot vote for these resolutions, because I think they violate the very spirit of the instrument under which we sit here. Here is a proposition to add five new sections to the Constitution, and to make them and two clauses of the present Constitution irrepealable and unalterable. I ask the Senator if he has thought enough, to be certain, that these propositions are sound enough to make them, like the laws of the Medes and Persians, unalterable, in a free Government? I have read them over but twice. I know they would be wholly impracticable in Rhode Island. We have in Rhode Island no county organization that you can sue to recover the value of a slave. You must have somebody to sue. You must have an organization. I have not read them with a view to criticise, but I am speaking of them generally. Here is an instrument founded by our fathers. Our Constitution has been in operation three-quarters of a century, and the country has flourished under it as no other country has ever before done under heaven. There is in that instrument but one single clause irrepealable, and that is the clause which gives the State of Rhode Island as many Senators as the State of Kentucky. That you cannot repeal without unanimous consent, and that is the only one that now remains. There was another in reference to the importation of slaves, but that has become obsolete.

I will put a case to the Senator from Kentucky. Suppose that he and myself and eleven others had formed a partnership, and had paid in \$1000 each for raising water-rotted hemp in Kentucky, and had put into our

agreement that any one who would pay in \$1000 could join us, upon an equal footing with the original partners, and that the business might be changed, by the votes of three-fourths of the partners. This would be fair. Well, we went on, took in partners, and raised hemp, and divided twelve per cent. per annum. That would be a fair business—not so prosperous as this country has been, but it would be remunerative. Suppose we admitted new partners until we had thirty-nine, beside the original thirteen, a constitutional majority, and they conclude among themselves at a meeting in Wall street, (for if it paid twelve per cent. it would be from there these new partners would come, and not from among farmers, as we are,) and determining by their thirty-nine votes against our thirteen, to quit hemp-raising and go into slave-trading. We should remonstrate, and say, “That is an illegal business;” it is profitable to be sure, but illegal—and you have no right to make our concern an illegal one. They would answer, “it was legal when the partnership was formed—you old fogies have altered the laws since, and not we—it was lawful business when the contract was drawn—we persist in it.” We should look over the contract, and find it so, and though opposite to what we expected to be done, we should be obliged to submit. We are law-abiding men, and believe in the validity of contracts. But suppose that after getting us into the slave-trade, they should make another provision in the contract itself, that the business should be continued, unless unanimously voted otherwise, and that we must carry on this piratical trade as long as there was a thief or a liar in the concern. What would he say to that? We would not agree to it I know. He would say, “That is carrying things too far.”

That is just the proposition here. We are asked to alter this Constitution from what the fathers made it. We must alter the mode of its amendment, and put in seven new clauses that can never be repealed, no matter what public sentiment may be, without a unanimous vote; so that one single State, if we have forty, can prevent the repeal of any one of them. I know, when I address myself as I do to the honorable Senator from Kentucky, that he would not vote for that proposition himself under any circumstances. He would contrive some other method to heal these troubles; and I would go with him with all my heart; but do not let us tear up this old instrument under which we have prospered, which he glories in as much as I do. I do not want to make a speech about it; but I know when I love my country and its Constitution. No man can make me believe that I do not venerate that instrument; that I do not venerate the Union that it formed. I am under no apprehension whatever that there is a man who hears me that doubts my regard for every one of these States in the Union, and their institutions. I love Kentucky. I love South Carolina. I lived among them more than fifty years ago. I have partaken of their hospitalities. I have walked to the same churches with them, and knelt at the same altar; and a more hospitable people never lived. But as much as I love them, I say their present conduct is utterly unworthy of them; and the Senator from Kentucky must know that as well as I do. Because they want to cut up capers, are we going to tear up that instrument to appease them? Not we. Let them have a little bit of a frolic, if they want to. I do not want to whip them. That is not my notion. I do not want to hurt them.

I love Georgia. I lived with them fifty years ago. I have been out there on patrol in the night to watch. They were frightened about insurrection. There is always danger, they think. I never was afraid there in



my life. The only place where I ever saw any of this negro equality, as it is called, was in Georgia. A man kept a hotel in what was formerly the seat of government. It was a tavern, a very large one, kept by a Frenchman of the name of Posener. He invited me one day to go up and see his wife. I was a boy at the time. I went up, and found she was a great, burly negress. (Laughter.) I have nothing to say about her. That was the only time I ever saw that, and I was disgusted with it. I never saw it in New England in my life, much as the talk is about negro equality there. These Georgia people can stand their own troubles very well; but when there are any troubles down in Massachusetts, they get in a violent passion. They will have it that there is amalgamation and negro equality there; but I do not want to say anything about it. I dislike it, to be sure; but it is not best to make a noise about it.

The Republican party cannot insert a portion of the Declaration of Independence into its platform, but it is said that we mean the social equality of the negroes. I wonder if Jefferson meant that when he wrote it. These old men that signed it did not think any such thing. It is "young America" that has brought their doctrine into disrepute. Our distinguished Vice President, in a speech last year, read an old resolution of the Republican party of 1856, in which the word "equality" was not in. It was left out for some reason or other. It was copied from that old-fashioned Declaration; and he said that a careful scrutiny of it would show it meant negro equality. There was not a word about equality in it. I do not know where he got it; but I suppose all that was there was copied from Jefferson. We cannot make a platform but what a diseased imagination can torture it into anything, especially in these times. I have been to these national conventions ever since I can remember—not always as a delegate. The first one I went to, as a delegate, Rhode Island had the honor of voting for the author of these resolutions for Vice President of the United States; and if the rest had been as wise as we were, we should have had power to this day, in my deliberate judgment, taking what providentially happened; but we caught a Tartar.

I have never voted for a President in my life, and I have voted for forty years or more, when I did not prefer a man born in a slave State. In all the conventions I have been a member of, we have selected for President a man born in a slave State; and whenever there has been anybody up for President, and there were electors running in my State for a man born in a slave State, I voted for him without caring where he was born. I was for Mr. Clay in 1824; although Mr. Adams was a good man and gave us one of the best administrations I ever knew. I never had but one idol, and I never mean to have another in the shape of a man. It is almost as bad as to set up cotton for king.

I mean to treat this subject with all the gravity that its dimensions demand. I know it is one of the most difficult questions. I have thought of it, and looked into the fire more than a hundred hours since I have been here, not saying a word, to try if I could see the way out peaceably; and I am just as young as my youngest boy about it. Nobody has any experience in such questions as this; for nobody ever dreamt that mankind would have such folly as is now exhibited. What are they quarreling about? Literally nothing. This Government has been in their hands, as was said by the Senator from Ohio, (Mr. WADE,) for the last eight years. Practically, the South have had this Government for sixty years out of seventy-two; and they talk about sectionalism, and some of the remedies to get



rid of a sectional party are, to make a sectional constitution, run a line through, and give half the territory and offices to the side that has but one third of the people. A double portion is, with them, equality. The Senator from Virginia (Mr. HUNTER) wants a sort of double Executive—after the Siamese pattern—a first king and a second king. (Laughter.) He wants to elect them both, and let both have a veto. We have been pestered enough with vetoes since I have been here; and I would rather take the veto away from the one man than give it to two. You cannot get along with this Government, it seems, unless you let the minority rule some way or other. That is the question now. The minority want to rule, and they are afraid of the people—literally so.

I wish I could see a proposition that I could hear somebody who was disaffected say would satisfy him. I have not heard one of them say so. The Senator from Texas said if we would do about forty things that he knew we would not do, he would then *consider*. That is the nearest approach to a settlement that I have heard. (Laughter.) If we would stop the pulpits, burn the school-houses, suppress the newspapers, imprison the Abolitionists, and break up this Government, he would think about staying in. (Laughter.) He would take it into *consideration*; he would not *pledge* himself, he said. Oh, no! (Laughter.) Well, now, I like the Senator from Texas. I like him on account of his "better half." (Laughter.) She was from Rhode Island; and he will take anything I say kindly on that account.

Mr. President, it is a great question. These people who have seceded will find a bigger sum than they ever ciphered out before. I want to see how they will cipher it out before we move. Let those people that are afraid take care. I am not afraid. If I were, I should take care. I would do anything in reason to remove this dissatisfaction. I feel sad when I think of it. But I wish somebody that is troubled, and wants it relieved, would suggest how we can relieve it. Kentucky is as loyal a State as ever was in the Union. They want something, I know. The people have been aroused by this election, as is natural. All presidential elections excite a great deal of feeling; and for that reason it is the worst time in the world to try to amend the Constitution. They have talked it so long that they begin to believe it themselves, that the Republican party means to endanger their institutions. I said here four years ago, that if I found myself in a party that undertook to disturb the institutions of the South, I would quit it immediately. So I will. I have been in it now four years, and have yet to see or hear the first man in it propose any such thing. Nothing could induce me to remain in a party that I thought meant to break the Constitution.

As to the President elect, he is from Kentucky. All his social ties are with Kentucky. As has been well remarked by a Senator, he has not only said what he would do, but he has said what he would not do; and I do not believe there can be two inferences about that. Some candidates only say what they will do; but Mr. Lincoln has not left you to infer what he will not do. He has told you himself what he will not do. That is the man we have elected; and you can find in his record that he will not disturb slavery anywhere. He is against any such thing; and if he were not, he has family connections, social ties, and kindred, that would prevent him. These are higher guarantees than parchment. I would rather have the fervent, effectual prayer of a righteous man for this Union, than all you can write on parchment to save it.

I thought when I got up that I would keep my voice from rising, because when men's voices rise, sometimes their feelings get the better of them. I thought I would talk as if I was talking to my brothers, making not arguments but suggestions. No man felt more deeply impressed with the beautiful effort of the Senator from New York, (Mr. SEWARD,) than I did. It came from the right quarter to give peace. But the very next speech that was made after it, was the bitterest I have heard in the Senate. That was the response. I say this with the utmost kindness to my friend from Missouri, (Mr. POLK,) who made that speech. It was very bitter. The effort of the Senator from New York did not seem to have appeased him at all. I think the Senator from New York went a great way. Why, Mr. President, it is something for a party in the majority to agree to conciliate in the present aspect of this country. I will do anything that I can do that will not demoralize the Government. I am afraid of that—absolutely afraid of it. I am afraid to do anything that will bring reproach upon the Government I love. The Senator from New York said, that to threats he would offer conciliation. That I would do. He said that to exactions he would grant concessions. That I am not quite certain I would do. He said that to hostile array he would give the right hand of brotherhood. That is good. I have faith that the millennium will come; but I do not think it is here now. That would be good doctrine then. But, sir, the millennium has not come. I know the reading of scripture, but I suppose it was wrongly rendered. I could never interpret the scripture there where it said that that generation should see it; but I suppose the translators rendered it wrongly; they did not quite understand the original tongue. But, sir, the millennium did not come while Judas Iscariot lived, nor will it come while others like him fester and pester the society in which they live, shame their country, and dishonor their race. It will not come while such men are here. They will be disposed of before that time comes.

The Senator from Kentucky believes with me in that respect. I shall not utter a sentiment that he will not agree with. If I do, I will take it back immediately. He and I have lived too long together for me to say anything disrespectful to him. I never had any uneasiness in reference to him but about one thing, and that was about my children. I was not afraid that they would love him any better than I did; but I was afraid they would love him better than they did me, (laughter,) and that is the case with all Rhode Island. There is no Prince of Wales or his mother, or any other crowned head of Europe, that Rhode Islanders would travel so far to see as the Senator from Kentucky. And so it has been for the last quarter of a century.

I have now said all that I intend to say about making the proposed amendment perpetual. I hope the Senator from Kentucky will run out in his own mind the idea that I give him about that, and will feel just as I do in regard to it. The series of resolutions introduced by Edmund Randolph into the convention, declared that there ought to be a Government which could be changed by a majority less than the whole. That was one of the cardinal principles laid down when this Government was formed. Now, it is proposed to make this proposition so that it cannot be changed. The Senator from Kentucky loves the Constitution as well as I do. He was brought up under its teachings. He has illustrated it in every speech he has made, and his whole life has illustrated it. Guarantees to slavery are proposed as if the Republican party intended to invade the rights of slaveholders. Why, sir, they would not have a corporal's guard with them in



either House of Congress if they attempted it. It would not be as large as the Tyler party, and that consisted of but five.

I made some memoranda when Senators were speaking, for I thought I would answer some of their arguments in detail; but I never did write a sheet of paper over with notes but it bothered me, for I never can read them. I am sorry it has got to be the fashion to take them at all except by the reporters. Sir, I want the Senator from Kentucky to turn his mind and his energies to some method of composing these difficulties that shall not destroy the Government. I am willing to say that any interference with slavery in the States by the General Government is not among the powers granted to Congress, and ought not to be granted or exercised for all time. I do not believe the General Government has any such power. I never did believe it; and if you want to make it any clearer I would put that in. The powers of this Government are as distinct and as independent as if there were no States. The powers delegated to the National Government are to be exercised as if there were no States. On the other hand, the powers that are retained by the States, and the people of the States, are as independent of those as if there was no National Government. That is my doctrine. I am a State-rights man as well as a national man; and the powers are clearly defined—defined in the book and defined by the practical experience of seventy years. I should like to see a man bold enough to say that, under the authority of the Constitution, the General Government it created could interfere with slavery in the States in any way, directly or indirectly. I believe in no such doctrine, and I do not believe there is anybody who holds it; at least I have never seen him, nor do I believe there is a public man in the United States big enough to obtain a vote for President that would ever think of it, of whatever party he may be. We have nothing to do with protecting it or disturbing it in the States; but in regard to the Territories, I do not agree with the new-fashioned notion. I believe we have a right to do either in the Territories. We have a right to govern the Territories as we please. I do not agree in the notion that this Government is a trustee of the States for the Territories. I never heard of such a doctrine until lately.

The Senator from Oregon (Mr. LANE) says that he is for having the equal rights of all the States in this league. Why, sir, they had an alliance in Europe in 1815—I think it was the treaty of Vienna—where the five great Powers agreed together to take care of the rest of the world, and formed what was called "The Holy Alliance;" and I believe it is in being yet, and that there was a talk of calling them together to take care of Italy. That alliance consisted of England, France, Russia, Prussia, and Austria. If either of those Powers, during the last forty-five years, had discovered a new country, do you suppose it would give up its own title to it, and say it held it for the alliance? If a treaty of alliance for boundaries and the balance of power in Europe, had defined stipulated powers, anything they did they would do in common as we do; but is there any power here to discover territory? That is not one of the express powers granted in the Constitution, and on the theory of all these secessionists, when a ship of John Jacob Astor's discovered the mouth of the Columbia river, and took possession of it, that territory would belong to the State of New York. The Constitution gives this Government no power to acquire territory. Why is not that territory New York's? The power that discovers a country, by taking possession of the mouth of a river, takes all the slopes that run into it. That is the doctrine. Upon this idea, it would belong to



New York, manifestly; but it is a power incident to the *national* sovereignty; and so the sailor himself understood it, and he hoisted the stars and stripes there, instead of the flag of New York. What right have any of these other States to control slavery in that territory by virtue of our being trustees for the States? It is moonshine, utter moonshine. The territory belongs to the Government of the United States as an incident of its sovereignty; and every sailor that could hand, reef or steer would know what flag to put up on a discovered country, without consulting any constitutional lawyers. It would be the national flag.

My friend from Kentucky knows that. He believes it. We acquire territory in consequence of our national sovereignty. There is no express power in the Constitution for it. It is an incident to sovereignty, an incident to the war and treaty-making powers. We own the territory. The States have no more to do with it than the Emperor of France—not a bit more; and this Government has nothing to do with their local affairs, except to protect them. That we are bound to do. We have given them guarantees to take care of them, to save them from themselves; if they have disturbances among themselves, and call upon us; and we ought to do it. I am ready to do it if there is any disturbance. There is no man here but is willing to prevent any invasion of any State for the purposes of injury and annoyance, and to punish those engaged in it.

It has been charged that the Republican party were not willing to do this. Everything that has been done for the last twenty years is charged to the Republican party, which in our State did not exist until four years ago last May. That was the first meeting they ever held there under their organization—the first time they ever got together. When were the personal liberty bills, which are said to be an infraction of this treaty, passed? Massachusetts is arraigned here every other day for having passed personal liberty bills infracting the Constitution. Why, sir, if they are unconstitutional, they are utterly void. Everybody knows that. But who passed them? The first personal liberty bill that has been bandied about here all over the Senate, was passed when both Houses of Massachusetts Legislature were Democratic, with a Democratic Governor approving of it; and the negro equality law passed the same month. This charge of negro equality came from the fact that Massachusetts that year repealed the law which forbade the intermarriage of different races. That was done by the Democrats, and the next year the Democratic Governor, who approved those acts, beat “Honest John Davis.” I went there and made speeches to try to elect John Davis; but he was beaten. Our candidate was not elected by the people; nor was the other man in 1842, but he was elected by the Legislature, and next year he beat us one vote. The third year we had a national contest, and we beat them in Massachusetts; but we were beaten ourselves in the country in 1844; and that same Governor, who signed this personal liberty bill and the negro equality bill, was sent into the Senate for the best office in New England, nominated by Mr. Polk, and every Democratic Senator voted for him who knew, or might have known these facts. If they did, they would not care a fig about it, if he was on their side, but they would say: “this man probably had to get in by promising the Abolitionists to do something if he got their votes;” and that is the way he did get in. Their idea is, “it will do very well if our folks do it; only let it work for the benefit of the Democratic party, and you may pass personal liberty bills or negro equality bills to your heart’s content.” But now they get up here and lay these bills to the Republican party, when the first

Republican Governor elected in Massachusetts brought to the notice of the Legislature the very provisions in that bill which were wrong, and that Legislature altered them, although they had been on the statute-book twelve years with all sorts of Governors, and nobody ever thought of them until Governor Banks called attention to them. And yet these are the grave charges thrown up here against the Republican party, and made the occasion for breaking up this Government—such things as these!

I do not care what kind of laws they pass in Georgia or South Carolina affecting themselves; only I do not like to see those laws imprisoning our sailors because they are poor and good fellows. South Carolina made a law of that kind; but when she wanted to get trade with England, she repealed it in reference to foreign countries, but kept it on in reference to her own brothers. That is the way they treat us; but we are not going to fight about it, or quarrel over it. Our law in Rhode Island was passed six or eight years before there ever was a Republican party there—and there were more than six times as many Whigs who voted against it as there were Democrats. Two of the leading Whig members made speeches against it; but they were beaten. Afterwards, one of those men who opposed it came to be chief justice of our State. He was on the committee to revise the statutes—to make a code—and he pared the act down, so that it was inoffensive; and he said that, if it were not for making a noise, he would strike it out altogether. When the virus, that is, every part of it that even savored of unconstitutionality, was taken out, the Republican Legislature voted for it unanimously. We do not want any unconstitutional laws in Rhode Island, nor do they in Massachusetts. I know they have been pretty high strung in Massachusetts ever since I knew them. I never did like them any too much. They banished our ancestors, hung the Quakers, and killed folks for being witches. (Laughter.) I do not believe in that doctrine; but still, Massachusetts is a pretty considerable State. She was thought so in the time of the Revolution; and I made up my mind, on account of what she did then, never to harbor any hard feeling toward her for what she had done before, although she had done many bad things. I do not mean to have any hard feelings toward any State, or the people of any State, but I cannot go quite as far as the Senator from New York; for I think the millenium has not come, though I have full faith that it will. I do not know of a man in the country who could say as much as he did with as much propriety. It is something like a pendulum—the further it swings one way, of its own momentum, it will swing just so much further the other way. I keep pretty nearly right up and down, as well as I can. I do not want to be so straight that I must lean backward, although I am bent a little by age; and therefore I do not mean to go very far from my moorings. I have always held to these opinions, and do not mean to change them if I can help it. There may be circumstances which will oblige me to do so.

But I regretted, more than anything else in this debate, to see a sort of disposition to heap everything upon this Republican party, as if they made this fuss. The Senator from Illinois, (Mr. DOUGLAS,) says: "I told you so three or four years ago." I do not know but he did. There is a great deal of logic in facts, and we have been "told so" until we have carried pretty nearly all the free States. A great deal of this result came from its being charged that we meant to ruin the country. I have said for the last three years to my friends of the South, whom I have met at the Springs, that I believed they had got to this pass, that nothing would convince them

that we were not a pack of pickpockets and thieves, but for us to get power, and then their stump-orators would cease to be liars; because we should show them we had no intention of hurting them, and nothing else would prove it but our acts. I consider it providential that we have got power so that these men, before we all die out—old fogies as they call us—may see that this Government can be administered by a Republican President to the benefit of all his fellow-citizens in harmony and peace.

Now, I make what are called stump speeches in my State and others; but I never made a speech that I would not utter in the presence of every candidate before the people; never. I was told that up in Harrisburg, by a former distinguished Senator from Virginia, Watkins Leigh. He said we must make stump speeches; and as we did not know, he told us how. He said that we must not say anything on the stump that we would not say before a court of justice under oath. That was his rule, and I have observed it ever since. I said on the stump that I knew all the candidates before the country; and I believed they were all eminently able to administer the Government. I would not say it now, because I have seen some things which make it a little doubtful. I think some of them are getting to be sectional. But I said it then, and believed it; and I should not be a great ways off now if I were to say it. I think they are all good men now; but I think they have got excited, and are a little disposed to give up the doctrines that they maintained then. If they think they were wrong, I commend them for giving them up.

I do not think there is a doctrine in our platform that is subject to any just criticism, not one. Now, why should we give it up? It says that we mean to protect the States in their rights, and especially the right to regulate their own institutions in their own way. We polled nearly two million of votes, and these voters stand pledged to that doctrine. The Senator from Illinois received twelve or thirteen hundred thousand. Certainly they stand pledged to it, and against this doctrine of interfering for the purpose of protecting slave property in the Territories. There are three million three hundred thousand voters opposed to any such interference. They are all against it. I consider Mr. Bell's vote just as much on the Republican side as I do Mr. Lincoln's. I count anybody who voted against the other candidate. I wanted our voters, where they could not help our candidate, but could help Bell, to vote for him. That was my feeling. I think him an honorable, high-minded, and good man; and so I may say of the other candidate; but I do not believe he could have got three hundred thousand votes in this country upon the secession doctrine. Out of four million six hundred thousand votes, he could not have got three hundred thousand in the country upon this secession platform, in my deliberate judgment. He did not get more than one-sixth of the votes as it was. All the rest of the candidates were diametrically opposed to this doctrine. Those six hundred thousand now come here and demand that all the others shall throw up their platform, and break the Constitution, in order to appease them.

That is just the case, as I see it. That is the logic of these facts; and I cannot make anything else out of them. I ask the Senator from Kentucky, if that is fair? He would not do it. He and I will do anything that is right; but there is no propriety in denouncing great parties that have polled their million votes and more. Men have principles, feelings, love of country, and they will not be outraged by the surrender of their



doctrines. We cannot make our people do it. They would be mortified and chagrined at a surrender of principle.

I should like to make a congressional declaration, if it is needed—and such declarations go a great way—*and* let every man put his name on the call of the yeas and nays in favor of it, assuring the disquieted people of this country that they are safe in our hands; that we mean to protect them in their rights; that we mean to do everything that brothers ought to do to brothers. I will vote for such a declaration. I will do anything that I can to appease these feelings that so agitate the country, and even agree to alter the Constitution to do it, if you do not put so many things in it. But I would not undertake now to read these resolutions through, and find out exactly their positions in a fortnight. I want to think of a thing as much as a week after I have read it, to see how it is coming out, before I am willing to speak on it. The time has been when I could get up here at will and speak better, without knowing much about the subject; give free vent to my feelings, and go it at large. (Laughter.) But I am old enough to know it is the easiest thing in the world to be mistaken. I would now rather look it over awhile. I hope I have some reputation for speaking pretty nearly what I think, after I do look it over; and I do not want to lose it.

I have been told that there were propositions here that would satisfy some of the old thirteen States. I cannot help having a little more regard for them. I do not want Georgia to leave us. I do not want South Carolina to leave us. As to one or two of the "boughten" States, I do not believe we shall miss them much, anyhow. They cost us ten times as much as they are worth, and if they went to-morrow, it would not worry me as much as it would to lose one of the old thirteen, in which I have lived. I have lived under every President that ever was elected in this country. They were pretty good men. I like the old thirteen. I do not want Georgia or South Carolina to go out. I remember, when I talked about their banks in South Carolina, they complimented me very much; and I received letters every day thanking me for defending them against one of their Senators, who never meant to say anything to injure them; but they took the notion that he did. I wish I could talk to them about going out of this Union. I would beg of them, plead with them, and implore them not to go. I would assure them that they should have always a comfortable berth in this Union—better than they can get out of it.

As I have said, I have strong personal reasons for loving Georgia, and wish she would stay in the Union. Rhode Island has great public ones for doing so, and desiring it. Georgia has the ashes of one of the noblest of our revolutionary worthies; one whom the fathers regarded as second only to him "who was peerless among men." That dust must not go out of this Union. If Georgia does, we must take it to Rhode Island, his native land, and lay it with his kindred, where, when the last "morning drum beat" shall summon his spirit to reanimate that dust, he may rise with the same flag waving over him which was borne by grateful and gallant Georgians when they laid him to rest. It then was, is now, and, I trust, ever shall be the flag of the Union.









SPEECH  
OF  
*Pierre*  
MR. SOULE, OF LOUISIANA,  
ON THE  
PENDING MEASURES OF COMPROMISE.

DELIVERED IN THE SENATE OF THE UNITED STATES, MAY 21, 1850.

The Senate having under consideration the special order—being the bill to admit California as a State into the Union, to establish territorial governments for Utah and New Mexico, and making proposals to Texas for the establishment of her western and northern boundaries—Mr. SOULE said :

I moved an adjournment on yesterday to obtain the privilege of the floor, that I might avail myself of the first moment of convalescence which has been allowed me since the beginning of the session, and lay before the Senate and before the country some brief remarks upon the matters under debate, and more particularly, on the 10th section of the bill, which the amendment proposed by the honorable Senator from Missouri aims to modify.

I shall not attempt, nor I hope will it be expected on this occasion, to deliver a set speech. I am neither prepared for it, nor in the condition of health which admits of it; nor would it be proper under the limited issues now under debate. On the main question,—the admission of California into the Union as she is,—a wider range of debate will be admissible; and when that matter comes up, I may have to trouble the Senate again, should my health be spared.

The questions of controversy between the North and the South may be reduced to four, all arising out of claims of constitutional rights asserted and insisted upon on one side, and directly or laterally assailed on the other.

The First relates to the claim set up by the South to have an equal share in the Territories acquired from Mexico.

The Second grows out of the denial on the part of the South of any right in Congress to interfere with slavery in the District of Columbia, or to arrest or obstruct the slave trade between the States.

The Third refers to the right of the slaveholding States to have the provisions of the Constitution directing and commanding the delivery of fugitive slaves effectively enforced.

The Fourth embraces the boundary rights of Texas, as defined in her constitution and laws, as secured to her under the compact of annexation, and quieted of all Mexican counter-claims under the treaty of Guadalupe Hidalgo;—a question more immediately affecting the rights of sovereignty and eminent domain of *Texas*, certainly, yet presenting many obvious features as well as principles which render its solution of vast moment to the interests of the *South*.

Reversing the order in which I have mentioned these points of the controversy between the two great sections, let us see how they have been disposed of in the scheme of compromise reported by the committee.

The *FOURTH* comes back to the Senate with Texas shorn of her sovereignty over not only  $5\frac{1}{2}$  degrees north of the line of 36 deg. 30 min., and stretching to the southern boundary line of Oregon, upon the 42 deg. of north latitude, but embracing no less than  $2\frac{1}{2}$  degrees of the slave territory of Texas, situate south of 36 deg. 30 min.,

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which, if the frank exposé of the honorable chairman (Mr. CLAY) is to be trusted for the views of the committee, are to be converted into *free Territories* by the operation of the Mexican law, abolishing whatever slavery may exist there now, and prohibiting its introduction hereafter, in derogation not only of the compact between the United States and Texas, in which the South had large interests at stake, but destructive of the vested interests, under the compact, of the people dwelling within the limits of the surrendered territory;—an act of power to which neither the United States nor Texas is competent, without their consent.

The THIRD returns here with provisions so contrived that, far from remedying the evil of which the South complains, they most obviously embarrass and obstruct the exercise of her acknowledged rights; so that any one, unaware of the terms of the resolution of the honorable Senator from Kentucky (Mr. CLAY) upon this subject, must have concluded that the evil complained of was not any delinquency on the part of the Free States, in complying with a most explicit provision of the Constitution, but, on the contrary, that the main evil was the abuse, on the part of the Southerners, in claiming *free men as slaves*, in the exercise of the rights of reclamation of fugitives from service in the Free States; for, the only provisions reported are such as would greatly embarrass, delay, and add to the expenses of reclamation, to say nothing of the absence of all constitutional authority in this government to exercise jurisdiction over the *State Courts* of the South, enlarge their jurisdiction, assign them new duties, or require at their hands *records* of matters to which their functions do not pertain, and laying aside the absence of all constitutional authority in this government—(*beyond and after enforcing the extradition of fugitive slaves*)—of exercising a *federal jurisdiction within the slave States upon the subject of slavery*, under the guise of a penal bond payable to the United States, conditioned for the performance of those duties of humanity and justice, to which every one of the slave States have bound themselves and their courts by their own State laws, without the promptings or encroachments of these *federal requisitions*.

The SECOND comes back with a virtual surrender to Congress of that very power and jurisdiction over slavery in the District which the South have heretofore resisted so strenuously, and which there is every reason to believe she will resist to the last; for if, under the guise of breaking up as nuisances the public slave marts, (which are mere matters of municipal regulation,) Congress may prohibit slaves from coming here, and may emancipate them when they do come, (though brought for the honorable purpose of being sold to pay slaveholders' just debts,) is it not an obvious assertion of a *power* to emancipate them, if brought here for any *other* purpose? and no one who admits the power of Congress to legislate against this species of property which may be brought here for the payment of debts, and to convert (without a breach of faith towards the ceding States) this District into *free territory*, so far as it relates to slaves brought here for sale by their owners, can reasonably dispute thereafter either the power or breach of good faith involved in making it *free territory altogether*!

Having once more reached the FIRST, (involving the points in debate,) I remark that, after surrendering the unconditional admission of California as a State, which an honorable Senator, now in my view, (Mr. FOOTE), but a few days ago held to be a sufficient cause of active resistance on the part of the South, if admitted alone:—after surrendering, by that unconditional admission, every inch of soil in the new Territories susceptible of slave settlement and culture—the committee tenders to the South, as the only boon in which she is to seek a compensation for all the sacrifices extorted from her, the section before me which is the 10th of the bill under debate.

Such being the state of the question now presented to the Senate, I propose to inquire into the nature, extent, and value of that compensation thus proffered to the South, as satisfaction for her grievances and in security of her rights.

The section reads as follows :

"And be it further enacted, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and with the provisions of this act; *but no law shall be passed interfering with the primary disposition of the soil, nor in respect to African slavery*; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. *All the laws*



passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect.

What is it that this section concedes to the South? Why, nothing but the *statu quo* in the Territories, after the relinquishment, required in prior sections of the bill, of all pretensions to any portion of the vast and important country embraced within the boundaries of California, and south of 36 deg. 30 min.—the *statu quo*, with an unqualified inhibition to the territorial Legislature from passing any law in respect to *African slavery*; and thus, besides the solemn assertion repeated time and again, here and elsewhere, that the Mexican law prevails in the Territories, and that by its provisions slavery is prohibited there, the committee gives the North the still further assurance that this *statu quo* shall never be disturbed by any law which the territorial Legislature might think proper to pass for the *protection* of the just rights of slaveholders, either migrating to the Territories with their slaves, or passing through them, only; and hence, as to slavery, the Mexican laws are not only to continue in force there, but to be paramount and irrevocable by the local Legislature!

For, let me remark here that, should the ground assumed the other day by the honorable Senator from Mississippi (Mr. FOOTE) be a sound one, (as I hold it to be,) that the laws of Mexico except as to the *civil* rights of the Mexican American citizens, have been superseded by force of the Constitution of the United States, guarantying to slaveholders their rights of property in slaves wherever they may be, if out of the jurisdiction of a free State, and even there, if they are fugitives from service—even admitting that such an opinion should prevail—yet is it not perceived that these rights would be sterilized to very barrenness while this section stands as it is?—it being impossible under its provisions to obtain any *protection* for them either from Congress or the local Legislature? If there neither be law nor power to pass any in respect to African slavery—if two or more persons there are claiming the same slave, how is the right of ownership to be adjudicated between them? If a slave runs away, where is there an authority for his recapture and subjection to service? If he is kidnapped and carried off, how is his recovery to be had? If he strikes and wounds his owner, whence is the owners redress? He might, indeed, be prosecuted, and fined, and imprisoned for the breach of the peace; but that would be a rather *onerous* reparation; for, the owner would have to pay the fine and costs from his own pocket, and lose the slave's services while the confinement lasted! What, then, becomes of all the boasted and lauded forbearance of this compromise in saving the South's equality, and sparing her the flagrant injustice and galling degradation of the *Wilmot Proviso*?

We all know that we do not understand this 10th section alike—we know that its import in different minds amounts to absolute antagonism. Every hour of this debate makes this most obvious to all who hear it. If we are not deceiving one another, we are deceiving our *constituents*. A Southerner reading this section, without any special care as to its precise import, would be apt to conclude that this was well enough—that there was no *Wilmot Proviso* lurking in this language; and that it fairly meant that in the opinions of northerners, southerners might safely take their slaves there, and that northerners admitted their obligation to receive the Territories into the Union as Free States, or as *Slave States*, as the people residing in them should declare in their constitution.

We well know that the Northern gentlemen here do not understand this section in any such way; for, if they did, the South would have nothing more to ask in reference to these Territories. Unhappily it is not so. We all know it is not so, and that a proviso to this section, declaratory of such a meaning, would hardly command in this chamber five northern votes. I may put this matter to the test by offering such a proviso myself before this subject is done with, should no other gentleman do so. If, therefore, the Senate sustains the southern construction by adopting that proviso, then we can cheerfully and hopefully progress with the other provisions of the bill. But if that proviso be voted down, you can no more make that bill acceptable to the South than if you should ingraft the *Wilmot Proviso* upon it in so many words.

But I am met by the remark that the amendment proposed by the honorable Senator from Mississippi, (Mr. DAVIS,) involves a surrender of the doctrine of *non-interference* heretofore so strenuously advocated by the friends of the South. If that be so, I wish at once to be classed among those who feel disposed to vote it down. But I am curious to know how that amendment gives up the doctrine of *non-interference*. I never could

understand that doctrine as going beyond the power, either in the Territorial Legislature or in Congress, to establish or abolish slavery; and surely the amendment imports no such power; and by no dexterity of interpretations therefore, can it be construed into an abandonment of the doctrine of *non-interference*. It were idle to tell us that the free and the slave States possess equal and common rights under the Constitution, while the North refuses the South that protection to *her* property in a Territory of the Union which she affords to *her own* property there.

Rights unprotected become nonentities, and, losing all value, are undeserving of a name; and far from viewing the amendment as an abandonment of the doctrine, I conceive that it was devised as a shield to save it from utter annihilation, through that hurtful and disastrous non-action which the 10th section enjoins upon the Territorial Legislature.

The section of the bill now under consideration is the hopeful progeny of the most remarkable and exceptionable of all the original resolutions of the honorable Senator from Kentucky. That resolution was as follows:

"2d. *Resolved*, That as slavery does not exist by law, and is not likely to be introduced into any of the Territories acquired by the United States from the republic of Mexico, it is *inexpedient* for Congress to provide by law either for its introduction into or exclusion from any part of said Territory; and that appropriate territorial governments ought to be established by Congress in all of said territory not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery."

Every one remembers what outbreaks of dissatisfaction were pouring in upon us from time to time, from all parts of the South, as the proffered concessions of this resolution were spread afar over her distant borders. It may be said, without a word of exaggeration, that it aroused universal opposition at the South, and that even the honored name of its distinguished draughtsman could not save it from the deepest and heaviest reproaches; and I need not speak of the pointedly hostile reception it met with in this chamber. Now, the obnoxious features of this resolution plainly were, that it asserted; by irresistible implication, that the Mexican laws prohibiting slavery remained in active force in the ceded Territories, and shut out our people migrating thitherwards from the protection of that noble Constitution which had accompanied our flag and our armies through the heart and through the extremities of Mexico; and our southerners could not reconcile themselves to so striking an absurdity, as that the same Constitution which had accompanied and protected our sea craft and their crews and properties to every clime, and through every sea; which all the hostile forces of Mexico could not sever from our citizen soldiers there, should prove incompetent to protect us against the power and laws of these same Mexicans, when peace has come and made us *friends*; when a treaty has come and made us *brethren*; when a cession has come and made their territory *ours*; and that after it has become as much *theirs* as *ours*, our citizens may go upon Mexican territory and take the Constitution along with them while it remains a *foreign domain*, but the moment it becomes *ours*, the Constitution is banished thence, and if our citizens migrate thither, they must leave its privileges and its protection behind them!

Quite as exceptionable a feature of the resolution, and even more freely condemned, was the phrase that it was *inexpedient* to impose any restriction upon the Territories, because the Mexican laws had already imposed that restriction, and that those laws were still in force; which, of course, involved the obnoxious concession, which the South had resisted strenuously and *unanimously* from the threshold, that there was a power in Congress to impose the Wilmot Proviso; and such an acknowledgment coming from a Southerner, and tendered on behalf of the *South*, was not only a public repudiation of all she had often and deliberately asserted to the contrary, but it was an avowal, coupled with a representation of a change of opinion and of constitutional scruples, which, in point of fact, was palpably, yet most injuriously untrue!

Such, then, being the reception which this resolution had met with from southern Senators and from the South, it was hoped, as it was expected, that when it came back to the Senate from the committee, its obnoxious features would have been obliterated, and conciliatory modifications have been substituted therefor. Has this been done? Nothing of the sort. It is not, indeed, what it was; but the change, far from improving it, has, both, increased and enhanced the objections which existed before. It has in-



created them; for whereas the resolution imposed the restraint upon Congress not to pass any anti-slavery restrictions upon the Territories, the bill only imposes the restraint upon Territorial Legislatures, leaving Congress free to do just as it pleases, and reserving to itself a *veto* power over these Legislatures, which would not only insure the nullity of any acts of theirs countenancing or tolerating, in any way, the existence of slavery there, but even any conservative provisions which might afford it a mere *police* protection. It has *enhanced* the objection; for the bill not only does not repudiate the existence and supremacy of the Mexican laws prohibiting slavery, but it has been sustained by a speech from the honorable chairman, asserting that existence and supremacy in the most imposing and unequivocal terms. Moreover, the bill, when introduced into the Senate, was accompanied by an elaborate *Report* from the committee, which, like the opinions of courts which accompany their judgments, carries with it scarcely less weight than the *measures* it recommends. Now, the *Report* represents that the *Wilmot proviso* is not imposed in the bill, *because the committee thought it was unnecessary in this instance*. It does, indeed, declare that "the true principle which ought to regulate" the action of Congress, in forming territorial governments for each newly-acquired domain, is to refrain from all legislation on the subject in the territory acquired, so long as it retains the territorial form of government, &c. This is very good doctrine, certainly; and no Southerner will dissent from it; but the assertion of the "*principle* which ought to regulate" plainly admits the existence of a *power* to regulate and which *would* regulate as Congress thought proper, whenever the majority deemed it useful to do so. While that portion of the bill relating to Territories remains as it is, it is not possible that I can afford it my sanction and support; for I assert, what is beyond the power of refutation, and what it behooves every Southern Senator deeply to ponder on, *that no Senator can cast his vote for this bill as it is, without explicitly admitting, through an irresistible implication, a power in Congress to pass the Wilmot proviso!*

I would now call the attention of the Senate to so much of the remarkable speech of the honorable Senator from Kentucky (who opened the debate upon the Report and bill of the committee) as relates to the Mexican laws prohibiting slavery, remaining in force in the ceded Territories. With the Senator's usual manliness and candor, he avowed that, unless he had been convinced that the Mexican laws prevailed in the Territories, and that, by virtue thereof, slavery had no existence or protection there, he could never have brought himself to cast his vote in favor of the Territorial bill as it stands. He went further; and I ask the deliberate attention of Southern Senators to the prophetic warnings he put forth. He not only announced *his own conviction* that these laws remained in force there, but, while we were flattering ourselves that quite a different conviction might be wrought in due season *in a certain quarter*, he ventured the imposing announcement that a vast majority, not only of the people, but of the *jurists* of these States, concur with him in opinion upon that question. Well, sir, if that be the case—if it is gravely announced by one whose own opinions always carry with them so much weight and wield so much influence, that a vast majority of the *jurists* of the country are already with him upon this important constitutional and legal issue—how can the honorable Senator ask us of the South to vote with him, and in the way of a compromise, too, implying an acknowledgment of the present existence there, (and if not there, a power in Congress to put them there,) of prohibitory laws against the institution of slavery, which are absolutely odious to us, and which the tenth section of this bill not only recognises, but renders irrevocable? I ask every Southerner who listens to me, how he can vote for this bill without virtually *donceding* a power in Congress to impose the *Wilmot proviso* upon these Territories, and upon all Territories, whenever it chooses to do so? And, indeed, as this section gives to Congress an absolute *veto* upon all laws which may emanate from the Territorial Legislature, while it does not impose any restraints whatever upon itself, what assurance is given, what security have we, that even if we yield up our objections to the unexampled sacrifices which this bill exacts of us, under the promptings of a love of Union and a desire of Peace, and consent to its passage—I repeat, what security have we, what obstacle would be interposed against the introduction, *on the next day*, and the final passage of a bill imposing the *Wilmot proviso* upon these Territories? Nevertheless, we are told that this bill is to be the *panacea* for all the disturbing evils that annoy us; and lo! the very section we are debating puts and leaves every thing in doubt, every thing in danger, everything, yes, verily, every thing—in darkness! Only behold! Here is the eminent chairman of the committee pro-



claiming from his place in the Senate that these Mexican laws are now in force in the Territories; and yet here is the honorable Senator from Mississippi, (Mr. FOOTE,) on whose motion this committee was raised, and a staunch supporter of the measures it recommends, declaring from his place that these laws have been superseded by the Constitution of the United States, and that slavery cannot be inhibited from going there! Yet, while these opposite and clashing interpretations are given to the same features of the same section of the same bill, by its own friends, we are urged alike by both Senators to give it our support, and without reference at all to the obscurities which mask its meaning from its own champions! Under whose banner shall we confront the *Provisoists*? Under which construction shall we wage the war? Is it for Southern *rights* or Southern *wrongs*?

Great, sir, as is my respect for the profound learning and my admiration for the genius of the honorable Senator from Kentucky, I cannot concur with him in his conclusions upon this point, and I shall range myself rather under the banner of the distinguished Senator from Georgia, (Mr. BERRIEN,) whose adverse positions, if they have ever been met, have never in my judgment, been overthrown. These positions have derived additional force from that clause in the Mexican Constitution of 1843, which was first brought to the notice of the Senate by the honorable Senator from Missouri, (Mr. BENTON,) and which conclusively establishes that African slavery in Mexico was at that time abolished. As early as 1829, the abolition of slavery in Mexico was attempted to be established by the decree of the Dictator Guerrero; but that he had failed in the accomplishment of what he had aimed at, through a want of binding force in that decree, seems obvious enough from the act of 1837 of the Mexican Congress adopting Guerrero's language, but repudiating his authority. That law itself failed of execution through the failure of the government to fulfil the terms of manumission it had imposed upon itself, as well as from the want of authority to enact it; and the provision in the Constitution of 1843 may be safely referred to, with respect both to the law and the fact of that failure, and in proof that, in Mexican appreciation, nothing short of the sovereign power of the people was competent to the abolition of the institution of slavery.

The slave trade, as to Mexico, was abolished in 1824; and I refer to the fact that it may be borne in mind, that whether slavery or the slave trade had to be abolished, the better and controlling opinion was that the power to abolish either must be derived from the Sovereign Authority, and through the means of a Convention of the people, or (what imports the same thing,) a *Constituent* Congress like that of 1824, which abolished the slave trade.

From all this it follows conclusively, that these questions, so far as we can judge from the elements we may find in the constitutional history of the country, were considered by Mexico, as belonging to that class of general legislation which was so appropriately defined by the honorable Senator from Georgia (Mr. BERRIEN) as *public* or *political* legislation. That they thought so is most obvious, from the facts connected with the two decrees which I have just referred to. Notwithstanding all this, it is insisted that the Mexican *political* law survived the cession of the country, and now remains paramount and supreme in the ceded Territory, *to the exclusion of our own!* In other words—for such is the absurdity—that the Mexican Constitution follows its citizens even in a foreign country, and dwells with them, and shields and protects them there—so long as they remain; while the American Constitution, impotent for such a service, neither *protects them in their own country*, nor abides with them there. Yes; for, whenever and wherever the American Constitution comes in conflict with the Mexican Constitution, even upon territory which the blood and treasure of this country has made irrevocably *ours*, it must withdraw from the presence, and submit to the supremacy of a *Foreign Supreme law*, regulating and controlling the rights of *American citizens upon American soil!* I know of no process by which Senators can reach to these strange conclusions, without assuming the still stranger hypothesis that the clause in the Mexican Constitution of 1843, abolishing and prohibiting slavery, was adopted into ours by force of the treaty of cession, *which says nothing about it*; and hence that the Constitution of the United States has been practically and quietly amended, without the assent or knowledge of any of the States whose interests are to be so radically improved or impaired by the change.

I have listened attentively to all that has been said on this subject, throughout this protracted debate, in support of this political paradox. A few considerations, which I had supposed, were so natural and obvious that they would have occurred to any one, and

have proved quite decisive of such an issue, seem to have escaped its advocates altogether, and I beg to bring them to the notice of honorable Senators.

When our conquering armies entered Mexico at various points, nobody doubts, I imagine, but that the Constitution of the United States, and their *laws*, too, so far as they were applicable to American citizens, *inter se*, accompanied and abided with them during their sojourn there. Now, what became of the Mexican laws and constitution during the invasion, and while the American armies took and held possession? The law of nations would pithily respond with the *Leges silent inter arma*, which attests the presence of the conqueror and proclaims the supremacy of military domination. But the superior humanity and characteristic forbearance of American invaders left them in the free enjoyment of those *civil and religious* rights and privileges which the Treaty of Peace afterwards, more formally, *but just to this extent and no more*, guaranteed and assured to them; and so things remained during the hostile occupation. As to all *public, political* rights, whether derived from the Mexican law or the higher Sovereign Authority of her Constitution, they were, of course, and of necessity, superseded while that occupation lasted. When, on the return of peace, the American army retired, then, and simultaneously with it, the Mexican laws and Constitution resumed their *political functions*, and just as they were before the invasion, in all such parts of Mexico as were not embraced in the Treaty of Cession. That is clear. But what were the legal consequences of the cession in the *ceded Territories*? The political laws of Mexico, as well as her national constitution, were, and always had been, from the time of the invasion, and up to the very moment of the ratification of the Treaty, *suspended*. Now, I submit trustingly to the candor of honorable Senators to fix the point of time thereafter when, in their judgment, those laws and that constitution were *revived* within those localities and in that jurisdiction, and the Constitution of the United States withdrawn from there, *to give place to the Constitution of Mexico*? If revived, how? and by whom? The whole history of the negotiation, as well as the Treaty of cession itself, shows conclusively, as I shall presently attempt to show, that, although Mexico explicitly asked the revival of so much of her laws and constitution as prohibited slavery, yet the United States as explicitly refused it. None knew better than the Mexican commissioners, that if the constitutional interdiction of slavery inured to the inhabitants of the ceded Territories as a *civil* right, there could be no need of making a formal application to secure it to them; and none knew better than the American commissioner, or, at least, this Senate, which revised his proceedings and modified the treaty, that if it was a *civil* right, it could not be refused them. The Treaty of Cession has not revived this provision of the constitution of 1843: not *in terms*, certainly, for it says nothing about it; and we cannot conclude otherwise than that the United States have not revived and *would not* revive it, and that Mexico did not and *could not* revive it. This will be made manifest hereafter. If the revival took place at all, it must have taken place under some technical construction or legal corollary, of which neither party to the treaty seems to have had knowledge, or to have taken cognizance at the time. How could this be? The Peace and the Cession were simultaneous acts; not a moment of time elapsed between them. Mexico could not have acquired a fresh jurisdiction in these Territories in the very instant in which they were lost to her and by her consent. This would have been a legal anachronism of which there is no example, and to be matched only by the political absurdity of one nation ceding to another a portion of its national domain, and yet retaining jurisdiction over it!

But, before absolutely committing ourselves to this novel doctrine, it might be wise to consider where it will lead us. Honorable Senators should be prepared to abide all the consequences that will flow from it. Now, in the free States, I learn, it is matter of universal acceptance, that slaves carried into jurisdictions (with the consent of their owners) where slavery is prohibited by law cannot be reclaimed, but become free; and I will not pretend to disguise that, in Louisiana herself, adjudications have been had which give full sanction to that doctrine. Well, I have it from reliable authority that more than one hundred slaves, in the service of officers, quartermasters, sutlers, &c., accompanied the armies of Generals Scott and Taylor in their invasion of Mexico; that there were thirty of these in the train of the South Carolina regiment alone; and, that even the gallant hero of Buena Vista, now the President of the United States, had two of his own slaves in constant attendance upon him during the whole campaign. Now, *if* Mexico was a jurisdiction where slavery was prohibited; if all these slaves were taken into that



jurisdiction with the consent of their owners; and we give full scope to the doctrine just referred to, they all became free, and are entitled to their freedom now. This would undoubtedly have been so, had the slaves, with the same consent, been taken into any of the free States of the Union. But who believes that that effect has been wrought by their presence and sojourn in Mexico? Who believes that the brave old General would hold men in service and in *slave bondage*, too, who had ceased to be slaves by law? No one thinks so. But what prevented that result? Why, the *suspension* of those laws, clearly, and the supremacy of the Constitution of the United States (under the circumstances) over those laws, and through the protection it gave to the property of the owners in these slaves. I put it to the grave judgment of Senators to say, if General Taylor, with those slaves, instead of being in one of the political departments of Mexico, had been in either of the ceded Territories of California or New Mexico, at the close of the war, whether these slaves, though lawfully held in bondage upon *Mexican* territory, would have become free upon American territory, and by virtue alone of the restoration of peace?

If the political law of the Mexican Constitution prohibiting slavery was revived by virtue of the treaty of peace, it was not the *only* political law of Mexico which was thus brought back to life and into function by that measure. Kindred laws derived from kindred authority must have equal force in the same localities and jurisdictions; and I propose now to bring to the notice of the Senate some other political laws of Mexico, in active force and in full operation in these Territories when the war broke out, which, I must think, some of the honorable Senators who hear me would be most reluctant to admit had survived both our hostile occupancy and our possession under the treaty. Take an instance: At the opening of the war, the Mexican tariff laws absolutely prohibited, under heavy penalties, the importation of upwards of sixty articles of our home produce—sugar, rice, cotton, flour, &c. Now, during the war, the Executive of the United States caused to be established and enforced in the several sea ports in Mexico that were in our possession a tariff, laying and collecting a moderate revenue duty upon those very articles; and this tariff, I believe, was continued in practical force in California long after the peace, and up to the time the United States revenue laws were extended to her and to the other ceded Territories. I do not enter at all upon the question, whether the executive tariff and its enforcement in California, after the treaty of peace, had or had not the sanction of the Constitution; but I wish to take the judgment of the Senate upon the point whether, in legal contemplation, it was abrogated or not by the revival of the *Mexican Tariff*, with all its penalties and confiscations under the treaty of cession? If it was so revived, then all these penalties and confiscations should have inured to the Treasury of the United States; and if they did, who can estimate the millions in value of the ships and cargoes forfeited? If it was not so revived, it was not revived at all; and the political provision prohibiting slavery most assuredly encountered a like fate.

Sir, if the Mexican laws continue in force, there are other consequences equally important and far more obnoxious, to be realized. Those laws necessarily treat *American citizens as Foreigners*. While they are in force, an American could not be an alcalde, or magistrate, or have a right to vote; be an officer in the militia, or hold or exercise any office or franchise whatever. He might be compelled to give evidence against himself in criminal examinations, or be disallowed a trial by jury, even in a capital case! In religious matters, too, Americans migrating there would find themselves scarcely less aggrieved under those laws. Protestants could not be permitted to erect Protestant churches or to attend Protestant worship, nor when *dead*, be allowed the rites of Christian sepulture! Upon the numerous Catholic religious festivals, feast days, Protestants would be required to close their stores and shops, and to desist from all business, &c. If the great object of the Free-soilers be, as they sometimes say, to gratify our *Mexican* fellow-citizens by securing them in their just rights and privileges, they may rest assured that *these* fellow-citizens will consider either far less interfered with by the introduction among them of *African slaves* than by the coming thither of *Free-soil Protestants*; and if the Federal Constitution is to be regarded as the charter and measure of our rights, there is quite as much authority for excluding from the ceded Territories Free-soilers, with *their* Protestantism, as Southerners with Slaves; that is to say, no authority at all.

But, sir, those who maintain that the Mexican laws prohibiting African slavery still obtain in these Territories will have to encounter another startling consequence, and must rid themselves of it as best they may; and that consequence is, that the same laws



which prohibit *African* slavery there, tolerate *Mexican* slavery ; and so the free-soilers will have to make their choice between *black* slavery and *white* slavery ! The victims of Mexican *peonage* are the *slaves of debt* ; and the dominion of the master is quite as absolute, and the prospect of the *peones* quite as dreary and changeless, as those of the Africans in any of the slave States.

Have honorable Senators contemplated all the revolting consequences which flow from the doctrine that the Mexican laws prohibiting African slavery are in force in these Territories ? If they be, by the very same implication, so are the laws regulating Mexican *peonage* ; and honorable Senators must at once see it might be possible, as it would certainly be lawful, that while an *African* would be instantly emancipated upon going there, and could not be redeemed to slavery, an *American citizen* might, through want and misfortune, become the *peon* of so vile a thing as a *Mexican lepero* ! The highest success, therefore, that our opponents can promise themselves in this memorable struggle is, to shield the *African* race from an enslavement and a doom from which they neither care nor strive to shield *their own*. While African slavery can receive no accession, except from descent, they insist upon the existence and the ascendancy of a foreign code of laws, which presents fresh and inexhaustible sources of supply in our own race, and makes poverty and want a lawful means and justification for enslaving *Free born White Men* !

I had supposed, until very recently, that in all the civilized States of the world, where the people were living under constitutional charters which they had themselves made, not a parallel was to be found to that system of servitude for misfortune which *peonage* presents. I was mistaken, sir. A parallel—more than a parallel—has existed for the past half-century, and, unrepealed and unmodified, exists in full force now, in one of the most enlightened and liberty-loving communities in all Christendom. I mark the interest and curiosity which this statement awakens ; and I think I can read upon Senators' lips the question : "In what corner of Europe does such a community abide ?" Ah, not in Europe, sir ; not on the other side of the Atlantic, but on this ; not in the British or Hispano American possessions, but our own ; not in the southern section of the Union, but in the northern ; not in a *slave* State, but in a *free* State ; and if further *indicia* are needed to mark the locality, let me say at once that I have reference to a community, which, (prizing its consistency as above all worth,) after casting its electoral vote in favor of a southern *slaveholder*, for the high office of President of the United States, passed resolutions at the first session of its State Legislature thereafter, denouncing slavery as a *crime*, and, not content with this, caused this foul and heinous charge and deliberate insult to be officially promulgated by her Senators in the South's presence, through her Senators upon this floor. I need say no more to point unerringly my reference to the *slave-detesting* and *liberty* and *Union-loving* State of Vermont !

I read from the organic law, and the first article in the first chapter of her State Constitution :

ART. 1. All men are born equally free and independent, and have certain natural, inherent, and unalienable rights ; among which are the enjoying and defending of life and liberty, acquiring, possessing, and defending property, and pursuing and obtaining happiness and safety. Therefore, no male person born in this country, or brought from over sea, ought to be holden by law to serve any person as a servant, *slave*, or apprentice, *after* he arrives at the age of twenty-one years, nor female, in like manner, *AFTER* she arrives at the age of eighteen years, *unless* they are bound by their own consent after they arrive at such age, OR ARE BOUND BY LAW FOR THE PAYMENT OF DEBTS, DAMAGES, COSTS, FINES, OR THE LIKE!!

Plainly, then, all persons, *male* or *female*, *white* or *black*, with or without their consent, are liable to be holden as *slaves* in *Vermont*, if within twenty-one and eighteen years of age respectively ; if with their consent, without any limitation at all, and *may* be sold at any age as *slaves* "FOR DEBTS, DAMAGES, COSTS, FINES, AND THE LIKE!" Yet, with this organic sanction and authorization of *white* slavery, of *Vermont peonage* prefixed as the very frontispiece of her Constitution, she deliberately announces in her Legislature, and proclaims in the Senate chamber of the Union, that *Southern slavery* is a *CRIME* !

To my own apprehension, Mr. President, by far the most toilsome portions of this discussion might have been spared to the Senate, had honorable Senators contented themselves at the threshold, with weighing impartially the stubborn facts of *record* which

this case presents. Senators have quoted the law of nations as decisive of the rights of a conquered people to retain certain portions of their laws until the nation subjugating them has substituted other laws in their place. Nobody disputes that; but Senators seem to have overlooked entirely that the law of nations never interposes its authority in regulating the rights and duties of nations, except upon matters about which the Treaties and Conventions of Nations are silent. On the other hand, the law of nations is silent whenever such Treaties or Conventions contain stipulations upon the subject-matter at issue; for, these stipulations must be and are the exact measure of the rights and privileges yielded to and secured by the people who have been subdued. Clearly, then, the stipulations of the Treaty of Guadalupe Hidalgo, contain the full gauge of all the rights and privileges secured to the inhabitants of the ceded Territories. Let us, then, look into that Treaty, and see if there be any thing there which would deprive a Southern slaveholder from exercising such rights of property in such Territories as he might exercise under the Constitution of the United States any where out of these limits, and not within one of the free States, unless under a claim for the extradition of fugitives from service. I have that treaty in my hand; and I beg leave to refer to the ninth article of it, which I will now read to the Senate:

ART. IX. The Mexicans, who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican Republic conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights of citizens of the United States. In the mean time, they shall be maintained and protected in the enjoyment of their *liberty, their property, and the civil rights now vested in them according to the Mexican laws*. With respect to *political rights*, their condition shall be on an equality with that of the inhabitants of the other Territories, and at least *equally good with that of the inhabitants of Louisiana and the Floridas*, when these provinces, by transfer from the French Republic and the crown of Spain, became Territories of the United States, &c., (concluding with guaranties of all their *religious rights, &c.*)

Thus it is seen that while the Treaty aims to define and regulate the rights under it of the inhabitants of the ceded Territories, it will appear hereafter that this, the *only* clause which might have been construed as giving a surviving effect to the laws of Mexico or the civil rights of these Mexicans, has been stricken out from the original treaty. But I am prepared to show that, even under the clause as it originally stood, the Mexican Americans acquired from it no just pretensions to the privilege now claimed from the United States in their name—a claim no less than this: That the Mexican laws, while *conferring rights upon the Mexican residents! took them away from Americans* migrating there. This is obviously a gross distortion of both the spirit and letter of the clause. It means nothing of the sort. It leaves them their *civil and religious* rights, and nothing more. Even had the original article of the treaty remained unmodified, how would that prove that the permanent exclusion of slavery was one of the *rights* which it was the object of the treaty to secure to the inhabitants? The pretension is absurd. Furthermore, what were the “*political rights*” spoken of in this Article and what was to be the measure of their enjoyment? the same Article gives the answer: They were to be “*equally good with that of the inhabitants of Louisiana and the Floridas.*” Mexico was content with that. The United States was not. But suppose that guarantee to have been preserved to the inhabitants of these Territories, would that have excluded Southerners from migrating thither with their slaves? Was slavery abolished or excluded from Louisiana or Florida on their accession to the dominion of the United States? None knew better than Mexico, that it was not so. None doubted less than Mexico, that the ceded Territories would be overrun with slaves. None struggled more earnestly than Mexico to prevent it; but (as it will appear hereafter,) that struggle was without fruits, it was in vain.

I demand of honorable Senators who occupy these strange positions, how the fact of a slaveholder migrating to one of these Territories with his slaves would interfere with the *civil rights* of the Mexicans residing there? If this Government were to attempt to reduce these Mexicans themselves to slavery, or even to force them to become slaveholders, that would be a palpable breach, not only of their *civil rights*, but also of their *personal liberty*. But if Mexicans cannot enjoy *THEIR own civil rights*, under the



treaty, without the total denial and destruction of the *equal civil rights of American citizens*, then the treaty is a flagrant breach of the Constitution of the United States, and void for the want of constitutional authority in the President and the Senate to have made and ratified it. But I have shown already, that no such absurdity or nullity taints or avoids the treaty of cession; that the clause in the Constitution of 1843, prohibiting slavery, like all other laws of *constitutional* authority, was a law classed by every publicist of reputation among the *public political* laws of the country; and those publicists concur, without an exception, that such laws never survive, but are brought to an end, *eo instante*, with a change of dominion. Besides, civil rights must first be conferred or recognized by the ceding government, before they can be protected by the general terms of a treaty of cession; and how the provisions of the Mexican constitution, *taking away from Mexican citizens a pre-existing right to hold slaves*, can be construed as conferring on them any civil rights, or any rights at all, is a problem too subtle and impalpable for the grasp of any faculty of mine, and which I must leave to honorable Senators who are wiser than I am, to ponder on and solve.

I know not if I can have the pardon of the Senate for having dwelt so long upon the nature and operation of the "civil rights" said to have been secured by the treaty to the resident Mexicans, when I knew all the time that the treaty, as ratified, neither mentioned nor provided for any civil rights whatever. The only way I can explain or excuse myself for thus discussing matters not *in curia* is, that I but followed the lead of Senators, having far more experience than I in debate upon this point, and for reasons to me unknown, left out of view altogether the 9th article of the *amended*, and argued the matter upon the basis of the 9th article of the *original* treaty; and the issues and arguments based upon this assumption, thus laid before the country through the speeches of Senators, and through the public press, would have left my remarks void of application and point, and scarcely intelligible, had I strictly confined myself to the provisions of the *amended* treaty. This will be seen at once by my calling the attention of the Senate to the 9th article of the amended treaty, just handed to me by my honorable friend, the Senator from Mississippi, (Mr. DAVIS,) with the same article of the original treaty, which I have already laid before the Senate.

#### *Article 9th of Amended Treaty.*

The Mexicans who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution, and, in the mean time, shall be maintained and protected in the free enjoyment of their *liberty and property*, and secured in the free exercise of their religion, without restriction.

Now, in the corresponding sentence of the original treaty, touching the protection guarantied to them as to their existing rights, the language reads thus: "En el entretanto; eran mantenidos y protegidos en el goze de *su libertad de su propiedad y de los derechos civiles*, que hoy tienen segun las leyes Mexicanos;" which, anglicized, reads: "In the mean time, they shall be maintained and protected in the enjoyment of their *liberty their property*, and the *civil rights* now vested in them according to the Mexican laws." The important words, "*and the civil rights now vested in them according to the Mexican laws*" were stricken out from the original treaty, and have ceased either to devolve any duty upon the United States, or to confer or secure to the Mexican residents any privileges or immunities whatever in regard to them. All that is secured to them in the *ratified* treaty—all that the United States are bound, for—is their maintenance and protection in the enjoyment of *their liberty and property*; and it would be difficult to conceive how the enjoyment by American citizens in the Territories of *their liberty and property* would interfere with that of the Mexican residents, or be a breach of faith or of duty in regard to the protection secured to them in the treaty of cession. Surely Senators will not seriously maintain that the civil rights of *liberty and property* cannot be enjoyed by the latter but by abridging the liberty or abolishing the property of the former. And whatever may have been the *other civil rights* intended to be recured by the ninth article of the treaty, as it originally stood, and even admit-



ting that it was designed to cover and continue in force the *political* inhibition of slavery in the Mexican Constitution, still as those other "civil rights" were thereafter taken out of the treaty-protection of the United States, through the omissions and substitutions of the amended ninth article, they ceased to have any operation at all, unless our opponents maintain that important provisions *excluded* from a treaty, designedly and expressly, have precisely the same effect as if they were *included* within it in so many words; and if they do, they are no longer to be reasoned with.

If any doubts remain upon the minds of honorable senators as to the clause of the constitution of 1843 having survived the cession of California and New Mexico, those doubts will be entirely removed from a bare inspection of the negotiations and the instructions of the Mexican government to the Mexican commissioners which preceded the treaty, and the amendments that were *adopted* and *rejected* in executive session in this very chamber, when they were under advisement for ratification. It will be remembered that the honorable senator from Kentucky, in the very able speech he delivered at an early period of the session in support of his original resolutions, read us, with his characteristic impressiveness, an interesting extract from the confidential despatch (No. 15) of Mr. Trist to the Department of State, dated Tacubaya, Mexico, September 4, 1847, minutely setting forth what had occurred in conference between the Mexican commissioners and himself upon this very question of the introduction or exclusion of slavery into or from the Territories to be ceded to the United States. I agree with the honorable senator that this passage has an important bearing upon some of the issues he presented, and which are now under debate; and I ask leave to refresh the memories of senators by calling their attention to that passage once more. In reference to this point of the conference, Mr. Trist says:

"Our conversation upon this subject was perfectly frank, and no less friendly; and the more effective upon their minds, inasmuch as I was enabled to say with perfect sincerity, that although their impressions respecting the practical effect of slavery as it existed in the United States were, I had no doubt, entirely erroneous, *yet there was probably no difference between my individual views and sentiments on slavery, considered in itself, and those which they entertained.* I concluded by assuring them that the mention of the subject in any treaty to which the United States were a party was *an absolute impossibility*; that no President of the United States would dare to present any such treaty to the Senate; and that if it were in their power to offer me the whole territory described in our *projet*, increased tenfold in value, and, in addition to that, covered a foot thick all over with pure gold, *upon the single condition that slavery should be excluded therefrom*, I could not entertain the offer for a moment, nor think even of communicating it to Washington. The matter ended in their being fully satisfied that this topic was one not to be touched, and it was dropped with good feeling on both sides."

This language is strong and full of meaning; but, although Mr. Trist's conduct was subjected to strong criticisms, and much of it fell under censure, yet no one, as far as I know, ever blamed him for his action on the subject of slavery. Sir, the Mexicans may be far behind the age in many branches of science, in the useful arts and inventions, and the mighty tactics of war. But in diplomacy they rival any of the master States of Christendom, and have taken their position amongst nations in the front rank. I do not mean at all that diplomatists are not to be found who wield and display a profounder and more finished statesmanship—minds of larger scope and fuller knowledge; but in ready sagacity, unflinching acuteness and far reaching dexterity, I doubt if Mexican diplomatists are anywhere surpassed. Had there been the slightest color for the interpretation which our opponents give to the words "civil rights" in the 9th article, as it originally stood, the Mexican commissioners would have desisted it and seized upon it at once; and the last thing they would have thought of would have been to risk a formal proposal on such a subject, when they well knew that a failure must necessarily and absolutely put an end to that interpretation of the 9th article, which, but for the rejected proposal, it might plausibly have borne.

That these proposals of the Mexican commissioners to Mr. Trist, on the subject of the exclusion of slavery from the ceded Territories, were regarded by them as no light or trivial matter, but as an object of the highest moment and consequence, will be most obvious to Senators, if they will take the pains to consider the important document in Spanish which I hold in my hand, and which accompanied the treaty into the Senate. It purports to be the instructions from the Mexican government to the Mexican commis-

sioners, prescribing their active and passive duties in the approaching negotiation. With the leave of the Senate, I will proceed to read from the title prefixed to these instructions:

*"Puntos que deberan tratarse en las conferencias con el comisionado de los Estados Unidos, y que deberan servir de bases a los de Mexico, propuestos al exmo. Sr. Presidente por el Ministro de Relaciones, y aprobados por S. E. en junta de ministros."*

Which may be rendered thus:

*"Points which must be treated of in the conferences with the United States commissioners, and must serve as the bases of those of Mexico, laid before his Excellency the President by the Minister of Foreign Relations, and approved by his excellency in a Council of Ministers."*

Now, the 13th article of those instructions makes known, in unmistakable terms, the deliberate and anxious purpose of Mexico to secure the exclusion of slavery from the Territories:

13. *Los Estados Unidos se comprometeran a no consentir la esclavitud en la parte del territorio que adquieran por el tratado.*

Which means:

*The United States shall bind themselves not to permit that slavery be established in the territories ceded by the treaty.*

These instructions bear date Mexico, August 24, 1847, and at the foot bear the imposing names of LOPEZ DE SANTA ANNA, T. R. PACHECO, N. ROMERO, ALCORTA, and RONDERO; and the whole document attests the solemn earnestness of Mexico upon the subject referred to.

One brief reference more to a memorable movement which took place in the United States Senate while the treaty was under advice for ratification, and I will not trouble the Senate a moment longer upon the vexed question, *"Whether the clause in the Mexican Constitution abolishing slavery remains in force in the ceded territory, or was withdrawn, with all its other provisions, to give way to the jurisdiction and supremacy of our own?"*

Having established, I flatter myself, that in the same moment of the ratification of the treaty, when Mexico parted with the ownership and jurisdiction, the United States, and without the lapse of a single instant, acquired both—as the United States, it is conceded, held exclusive jurisdiction during the whole period of their hostile occupancy, it would be marvellous, indeed, if, by adding to their rights *as invaders* their rights *as conquerors*, and to these their rights *as purchasers*, they diminished the rights they had before!

At an executive session of the Senate of the United States, held March 8, 1848, the following memorable proceeding took place, as it stands recorded upon the journal of the Senate of that date:

On motion of Mr. Baldwin, to insert the following words, to wit:

*"Provided there shall be neither slavery nor involuntary servitude in the territories hereby ceded, otherwise than in punishment of crimes, whereof the party shall have been duly convicted."*

And it was determined in the negative—yeas 15, nays 38.

Those who voted in the affirmative were—

Messrs. Atherton, Baldwin, Clarke, Clayton, Corwin, Davis of Massachusetts, Dayton, Dix, Greene, Hale, Miller, Niles, Phelps, Spruance, and Upham.

Those who voted in the negative were—

Messrs. Allen, Ashley, Atchison, Badger, Bagby, Bell, Benton, Berrien, Bradbury, Breese, Bright, Butler, Calhoun, Cameron, Cass, Crittenden, Davis of Mississippi, Dickinson, Douglas, Downs, Felch, Foote, Hannegan, Hunter, Johnson, of Maryland, Johnson, of Louisiana, Johnson, of Georgia, Lewis, Mangum, Moore, Pierce, Rusk, Sevier, Sturgeon, Turney, Underwood, and Yulee.

From the rapid glance I have taken of the negotiation in Mexico, and the decisive instructions of the Mexican Government to the Mexican commissioners, it is clear that no amendment was made or could have been made to the original treaty so perfectly acceptable as this to Mexico. This was well known to the Senate. No doubt could have rested upon the minds of Senators, that this amendment would not have perilled in the least the ratification of the treaty. No reasons, therefore, of this sort could have brought down so heavy a vote against the amendment. Only look at it: out of a Senate



of 60, it could command but 15 votes ; precisely one-fourth of the senators elect, and not a Senator more ! And thus went down the *Wilmot Proviso*, in a struggle for the mastery among its friends. But time has developed that this was a sham fight, after all ; the object was to disarm the South, and lull her distrust, and she joined in the acquisition. But when the acquisition was made, back came the Proviso, galvanized into life with a new vigor and a bolder face. The seeming rupture exists no more. Its friends rally fiercer and stronger than ever ; and although, waging war under conflicting devices, they differ in many points, they are unanimous in *one*—in spoliating the South of her constitutional right of expanding her limits and extending her dominion. Some there are who meet the responsibility manfully, and come boldly to the mark, with the *Wilmot Proviso* ever on their lips ; others who stoutly deny a power in Congress to pass the *Wilmot Proviso*, yet sit complacently by, and concede a power in Congress to prompt *California* to pass the Proviso for it, and thus actually to delegate to California powers it never possessed itself ; for where is the difference, in effect, between authorizing *California*, in the first instance, to spread out the *Wilmot Proviso* over the vast domain of the Union on the Pacific—from Oregon to Mexico, from the Sierra Nevada to the Colorado ; and when that high handed measure, which ought to pertain only as a muniment to sovereignty, is done without the least sanction on the part of Congress, if Congress ratifies the act by receiving her into the Union as a Sovereign State ? Others there are who, fearing to risk the introduction of slavery into the ceded Territories, upon the issue involved in the question whether the Mexican Constitution survived the cession within the American boundaries, are resolved and prepared to secure its exclusion by the *practical* enforcement of the *Wilmot Proviso*, in withholding from the local legislature all power to afford it that *protection*, in common with all other property, it is justly entitled to, and so absolutely needs ; and, to insure that enforcement beyond the reach of chance or justice, by a reservation in Congress of a revisory and vetoing power to annul at pleasure all the enactments which the Territorial Legislature may pass !

Why, then, was it, that so many of the *Wilmot Provisoists* joined the *Anti-Provisoists* in voting it down ? But one answer can be given—the adoption of the amendment would most undoubtedly have defeated the treaty. The ratification of a treaty requires that two-thirds of the Senators present shall vote in its favor ; and in a Senate of 60, with 30 members from the free States, and 30 from the slave States, it would have been utterly hopeless to have looked for the consent of 40, after it had been made so unacceptable and odious to southerners by the insertion of the *Wilmot proviso*. The ratification of the treaty immediately and absolutely depended upon *the southern vote of the Senate* ; and not an inch of territory would have been acquired without it. This every Senator knew ; and the prompt and decisive rejection of Mr. BALDWIN'S amendment involved an implication, and indeed a promise, as binding in conscience and justice as a formal compact, that the *Wilmot proviso* should never be applied to the ceded Territories while their territorial condition lasted. Sir, I would wish at all times, both from a sense of propriety and from choice, to keep within the bounds of parliamentary order and courtesy ; and I hope I am passing the limits of neither, when I declare that I cannot see how honorable Senators can reconcile to any just appreciation of national morality, the attempt which is here made to resuscitate the *Wilmot proviso* and introduce it afresh, in the dangerous and deluding form which it assumes in the bill, after it had been strangled beneath the pressure of the overwhelming numbers which rejected Mr. BALDWIN'S amendment, and thus give it a place in the Treaty *after* the ratification which would have destroyed the Treaty if it had been put there before !

I will trespass but a brief moment longer upon the patience with which honorable Senators have so kindly borne with me, to take in a general way but a passing glance at the Report and accompanying bills presented by the committee, and which honorable Senators, who doubtless, see clearer and further than I do, have been pleased to announce as a *compromise*. Sir, I wish it was a *compromise*—a *real* compromise—containing *mutual* concessions—and a *fair* compromise containing *equivalent* concessions, (or at least so regarded by the parties who propose, and by the parties who accept them ;) for then I would support it with all my heart. I am as sensible as any one that the country needs repose ; and I do not doubt but that the South would go as far, and I am sure much further than the North, in making any sacrifices which would secure it upon terms which neither humiliated nor dishonored her. But, Mr. President, I must say, in all candor, that I do not see in these measures any such compromise, nor indeed any compromise at



all. Concessions, and many of them I see, but all of them are concessions from the South; and this being so, where is the compromise? Will honorable Senators point out to me a *single* concession from the North to the South which these bills contain? I ask but for *one*. Sir, there is *none*. No; not *one*. The characteristic features of all the measures before us are exactions on the one hand and yieldings on the other.—The South *gives*, the North *takes*. In truth, unless it can be said that when the North is content to take *less than all*, she concedes all that she *saves* from the *spoliation*, there is not a *concession* in the whole scheme to give evidence, I will not say of her magnanimity, but of her justice.

The honorable Senator from Kentucky (Mr. CLAY) attaches so much weight to the conviction he is under that the clause in the Mexico Constitution prohibiting slavery remains in full force in the ceded Territories, that he declares, with that directness and frankness characteristic of his bearing in the Senate and elsewhere, that were his conviction otherwise, he would not have supported this section of the bill. On the other hand the honorable Senator from Mississippi, (Mr. FOOTE,) if I understood him aright, assigns as a reason why he supports the same section, the conviction he rests under that the *prohibition* was abrogated and annulled by the treaty of cession. Sir, is not this a strange state of things?—not, indeed, that Senators should support the same measure to attain the same result, and for different reasons—not at all; but that they should do so from opposing and antagonistic reasons? Many other Senators doubtless have ranged themselves upon either side of the positions held by the Senators referred to. Should these measures ever mature into a law of the land, will it be conducive to its proper execution that its friends are not agreed as to the true interpretation of the most important and vital provisions of the bill? The difference of opinion which I have noticed is somewhat less alarming and injurious, I confess, inasmuch as the Senators come from the same section of the Union; but how would it be if Senators from opposite sections held opposite opinions as to the true meaning of the same terms upon a most material point, in the most material issue that had been made? Now, sir, I am quite apprehensive, as I have intimated already, that this is the case in reference to the very section under debate. Put the question to any of the northern Senators who favor the plan, and I venture the opinion that you will scarcely find any among them who does not concur fully with the Senator from Kentucky, that the Mexican laws survived the cession, and are now in force in the ceded Territories; that the introduction of slavery there is wholly prohibited, and who do not go further, and hold that no binding obligation rests upon the Senators from the *Free States* to admit either of the Territories as a *Free State* into the Union. Sir, if such be the conflicting differences of opinion touching the import of the same language, in the same section, and between its own friends, who knows what interpretation it may bear among the masses of the people North, and West, and South? And does it become us as Senators to send forth to the people statutes, involving the rights and powers of the two great sections of the country, the true meaning of which they will no more agree about than we ourselves do. Will the South, think you, be satisfied with such a piece of patch-work as this?—with every point she contended for, surrendered and lost to her; with every claim she presented, disallowed; stripped of every acre of the ceded territory, of her pro-slavery rights in the District, forts, &c; with her rights to the extradition of fugitives from labor, clogged and obstructed, gaining nothing and losing *all*? I repeat it, again, sir, will the South be satisfied with this? It needs no Seer to answer for her: *NEVER*. Why, if such an adjustment as this would have contented her, what possible plea can be offered to shield her Senators and Representatives in Congress from the responsibility they have incurred in obstructing the public business, at a great waste of the public treasure, in contesting every issue which this plan determines forever against her? Why, sir, if the South was to be satisfied with this, all of us know that there has not been a single week of the whole session when this plan could not have been carried through in both houses triumphantly, had the South been united in its support; and we know quite as well that until very recently its main features were repudiated by southerners everywhere in and out of Congress! What fresh merits it has acquired, what new advantages it possesses, that now recommend it to honorable Senators who once spurned its provisions with bitterness and denunciation, I see not and I know not. If my Honorable friends who have so unexpectedly parted company with me on these issues, shall overthrow the able arguments *they* used in convincing *me* that the position *I* at present occupy, was the only sound *Southern and Constitutional* position,

is untenable, I may think of abandoning it. I do not say that it is not in their power to overthrow their own arguments, but I humbly confess what I fully know,—that it is not in mine!

My feeble health does not admit of my pursuing the subject further. Exhausted myself, without having by any means exhausted my materials, I shall avail myself of a usage, made known to me by honorable Senators, of making free use of them in revising what I have said.

It is deeply painful to me, Mr. President, to part on such an issue with any of my southern friends. It shall not be my fault, sir, if such modifications are not introduced into the plan of the committee as will enable me conscientiously to give it my support. Should I fail in my wishes, no course is left me but to stand where I am. I cannot support this ominous measure as it is, and have the approbation of my constituents. I cannot support it as it is, and have my own.

I am fully alive to all the responsibilities which surround me and weigh me down. I realize fully the mighty stake which Louisiana and the whole South have in thorough conciliation; but I will not seem to be contented with terms which, under the name of compromise, take all and yield nothing. I cannot seem to approve, and still less can I give my public assent to that which I think is neither just, fair, or kind. If we are to be crushed, let us not, at least, lose our self-respect. Brave men, struggling for their rights, may be stricken down in the strife; but, even when all is lost, a manly resignation and gallant bearing may impart a dignity to misfortune which will command the respect even of an enemy, while the vain-glorious boasting of pretenders, over achievements wrought where all has been disaster, brings upon them his silent pity and deliberate contempt.







# SPEECH

OF

HON. P. SOULÉ, OF LOUISIANA,

IN REPLY TO

HON. HENRY CLAY, OF KENTUCKY,

ON

## THE MEASURES OF COMPROMISE.

DELIVERED IN THE SENATE OF THE UNITED STATES, MAY 23, 1850.

The Senate having under consideration the special order, being the bill to admit California as a State into the Union, to establish Territorial Governments for Utah and New Mexico, and making proposals to Texas for the establishment of her western and northern boundaries—Mr. SOULÉ said :

I had not the least idea, Mr. President, that the very unpretending remarks which I thought it my duty to present to the consideration of the Senate, on the day before yesterday, would have been deemed worthy of the reception which they met with at the hands of the honorable Senator from Kentucky, (Mr. CLAY,) and be made the theme of the eloquent speech he delivered in reply to them.

The honorable Senator imparted to those remarks an unmerited degree of interest, by thus commending them to a notice which they could by no other means have attracted.

I most cordially thank him for it. But, while I feel grateful for the attention which he was pleased to bestow upon them, I owe it to myself not to let some of the suggestions which he thought fit to make, with regard to the course which I was pursuing, go forth to the country, under his high authority, unheeded and unanswered.

The honorable Senator has inferred, from the observations I made on that occasion, that I was to be classed among those whom no compromise or concession whatever was likely to satisfy, and who might be willing rather to continue the agitation which has grown out of the matters attempted to be adjusted and put to rest by the bill under debate and its associated measures. The imputation was neither kind to me, nor just in itself; and quite as uncalled for, as it was wholly undeserved; and meant doubtless to weaken and disarm any resistance which the South might oppose to his cherished scheme. It was one of those feats of oratorical adroitness by which we sometimes seek to rid ourselves, at a dash, of stubborn facts and troublesome arguments. But, sir, if the honorable Senator conceived that he could deter me, by artifices as shallow as these, from the performance of what I regarded as a stern, but sacred duty, I can tell him that, if his time was not wholly thrown away, his labor was scarcely worth the pains.

Was it either fair or just, I would respectfully ask, that so courteous an opposition, as mine, to the section then under debate, should be put forth to the country as an imposing proof that I was favorably inclined to a rupture of the Union? I had expected from the honorable Senator a fairer course of argument than the one he

thought proper to pursue on that occasion. He surely did not suppose that I would consider myself as sufficiently answered by inferences so strained and inconsequential that they had no warrant whatever from anything which I had said; and intended evidently to forestal a favorable public opinion upon the humble merits of my remarks, by imputing to me tendencies of mind to oppose, if not purposes of defeating, all plans of adjustment; while nothing could have been further from the sentiments I entertained or the feelings which animated me on the occasion referred to.

Sir, I entertain too exalted an opinion of, and set too great a value upon, the rights and privileges of an American Senator, to suffer them on any occasion, or under any circumstances, to be dealt with so ungraciously and arrogantly as the honorable Senator from Kentucky has seemed disposed and willing to treat them. When the Senator knows me better, perhaps he may spare me the annoyance of repeating the attempt. So far, I think, the failure has been signal; and the words of the poet most aptly describe the shaft he aimed at me:

“*Telum imbelles, sine ictu.*”

But, sir, the honorable Senator must be his own judge as to the occasions and modes of assailing me, and I, of the necessity and manner of repelling them. I mean not to complain (though I thought he felt inclined to handle me somewhat unceremoniously) that he thus brought upon me the necessity of thrusting myself once more upon the patience of the Senate, and of taking up again some of the matters which, in the ardor of debate, I may have overlooked when I was up before.

The Senator did me the honor to inquire whether I was prepared to proffer something that would be more likely, than anything which he had proposed, to heal the wounds of the country and to conciliate the two great contending sections. Surely the honorable Senator could not have been serious when thus propounding to me such a question. Why, does he not know that the South is in the *minority*, and that it were idle for her to think of proposing compromises, while the power to carry them out depends wholly upon the disposition of those opposed to her? However, I will say to the honorable Senator, that, if becoming in me to present one, I would take care that it were something that would not speak to the *eye* what it meant not to the *sense*; that would not deceive by a mere trickery of words, doubtful in import because duplex in meaning. My compromise would be such, that, while healing the wounds of the country, it would blur with no stain the South's honor, nor bring a blush to her cheek. Such would be characteristic of any compromise which I might tender, and no plan of adjustment without them can ever have my support.

Instead of aught resembling this, what are we presented with? Why, with a batch of measures the import and bearing of which their very authors cannot agree about—a scheme and compromise decisive of nothing, complex in expedients, impracticable in action—a compromise which can satisfy neither the South nor the North, for want of precision as to the aims and ends it proposes in settlement of the pending difficulties, and of distinctness in the disposition of the very few matters embraced in its enactments.

What is there that this plan really settles? If we resort to the Senators who formed the committee, to assure ourselves of the true meaning of the measures which it recommends to the Senate, we find that scarcely any two members of the thirteen can agree with each other as to the manner in which it is to operate and may eventually affect the interests of either of the great parties at issue in the controversy.

In my humble judgment, the South has been losing ground, and losing it rapidly, from the moment of the introduction of the original resolutions of the honorable Senator from Kentucky. What has resulted from the reference of those resolutions? They all went to the committee; but all of them did not return here either in the form of bills or otherwise; and those which did, were so shorn of their propor-



tions, and are muffled up in such disguises, that scarcely a trace of them can be recognised in the bills; to identify them, there is none.

The resolution No. 2 provided that "as slavery does not exist by law, and is not likely to be introduced into any of the Territories," "appropriate Territorial Governments ought to be established by Congress," &c., "without the adoption of any restriction or condition on the subject of slavery;" that is to say, forbidding Congress to restrict the introduction of slavery thither, and of course forbidding Congress to confer such an authority upon the Territorial Legislature.

Now, the report by no means repudiates the assumption, in this resolution, that the Mexican laws prohibiting slavery are now in force there; but, on the contrary, is introduced with a speech from the honorable chairman of the committee, not only maintaining their existence, but avouching it as the opinion of a vast majority of the people and jurists of the United States. It assigns as reasons for not imposing the Wilmot proviso that it was unnecessary; and so assigns them, that it is impossible that any one could vote for the bill accompanying the report, without admitting a *power in Congress to pass the Wilmot proviso!* Hence, in these features, there is nothing to choose between the resolutions and the report and bill. But a vast and vital difference exists between them, in this: that while the second resolution restrained *both* Congress and the Legislature from restricting the introduction of slavery, the bill, under the honorable chairman's explanations, restrains the Territorial Legislature from protecting it, and, indeed, sanctions its *expulsion*, when there; and, worse still: it not only reserves in Congress a power to *veto* any law made for its *protection* by the local Legislature, but imposes no restriction whatsoever upon *itself* from passing the Wilmot proviso whenever it thinks proper, though it were the day after the passage of this bill, without it. Which is best for the South?

I would ask, also, how have the matters been disposed of by the Committee that were embraced in the sixth resolution, which reads as follows:

"6. *Resolved*, That it is expedient to prohibit within the District the slave trade in slaves brought into it from States or places beyond the limits of the District, either to be sold therein as merchandise, or to be transferred to other markets without the District of Columbia."

Look at the bill! It provides that "it shall not be lawful to bring into the District *any slave whatever for the purpose of being sold*, or for the purpose of being placed in depot," &c.; "*and if any slave shall be brought into the District by its owner, or by the authority or consent of its owner, contrary to the provisions of this act, such slave shall thereupon become liberated and free.*" How will this do? A Southerner must shut his eyes if he does not see in this, an ominous beginning which can end only in the total abolition of slavery in the District—not of *all* the slaves; to be sure, but of *some* of them, and "without the consent of Maryland, the people of the District, and without just compensation to the owners of the slaves," which the honorable Senator from Kentucky, in his 5th resolution, exacts as a condition precedent to any emancipation here at all. Why, this is far beyond what the abolition petitions against the slave trade in the District have ever asked; for their assaults were exclusively directed against the *negro traders*, the parading of their slave gangs in public places, and their placing them in private depots for safe-keeping. That was all. But mark the workings of the bill. A debtor in an adjoining county of Maryland or Virginia, owes debts in the District or at home beyond his means of payment. His entire property is in slaves. He honestly resolves to part with them in order to meet his liabilities. At fair prices, they might pay all; at home prices, not fifty cents in the dollar. He brings them here for the honorable purpose of paying all; but this bill converts that purpose into a heinous *crime*, and forfeits his slaves, to his own ruin and that of his creditors. Is that just to either—or to the people of the District, or the State of Maryland, or the slaveholding States? Is not that discriminating against *slave property* with a vengeance? Congress could not forbid his bringing any *other property* here to pay his debts; and where does

the Constitution confer a power on Congress to legislate upon one species of property more than upon another? Such a discrimination saps the foundation of all equality in the *rights* of property as well as of its *protection*, and, of course, of all equality in the rights of the States, and opens widely the way to all further aggressions upon the rights of slaveholders *any where* and *every where*. As I said on another occasion, after Congress has decided that slaves shall not be brought into the District, even for the *honorable* purpose of paying the owner's debts, what could prove more tempting to Abolitionists than to insist upon, and press to accomplishment, the passage of a law to forbid their being brought here *for any other purpose*? The next step in the march of aggression would naturally be to forbid the slaves now here from being sold out of the District and removed to the South; and next, and last, and most surely, would follow, and *promptly*, too, the emancipation of those who are here; for, after the South had assented to the exclusion of slaves from the District for the payment of debts, none would dread or respect her resistance to that progressive emancipation which would inevitably flow from it.

This leads me naturally to another matter, which I hold as of the highest importance—I mean the action of the Committee upon the most disturbing and perilous question that has menaced the country—the WILMOT PROVISIO; or, in other words, whether Congress possesses a constitutional power to abolish or exclude slavery in and from the Territories of the United States? A large majority of the North, it is believed, affirm and maintain such a power in Congress. The entire South, with rare exceptions, wholly disaffirm it. The whole country feels and knows that the question cannot be safely deferred longer. There can be no peace until it is decided. It must be settled somehow: if not settled congressionally, or judicially, it may be settled by a rupture of this glorious Union.

Such being the state of public opinion and the impending dangers, it is no wonder that great anxiety should have prevailed in all the sections of the country to have had the opinions of the Committee of Thirteen upon the power of Congress over slavery in the Territories. There was hardly a doubt on the public mind, from the very constitution of the committee, and the well-known opinions of its members, that the decision must have been against the power of Congress. Such a conclusion was easily arrived at. The committee consisted of thirteen members—seven from the slave, and six from the free States. Of the seven, the chairman, (MR. CLAY,) I believe, affirms the power of Congress, but contests the *expediency* of using it. But the other six, it was well understood, explicitly denied the power. It was equally well understood that at least two of the other Senators who composed the Committee (MR. CASS and MR. DICKINSON) concurred in this last opinion. The committee, then, must have stood eight to five against the CONSTITUTIONALITY of the *Wilnot proviso*. If such was the opinion of a majority of the committee, Mr. President, was not the South entitled to have that opinion made known to the Senate and to the country? I do not say but that there might be cases where, under special circumstances, a committee might not withhold its opinions from the Senate and be justified. But I do maintain with great confidence that if a committee undertake to state any opinion at all about a matter referred to them, or to make any statement from which its opinion may be fairly and clearly inferred, that it is bound to take care that what is to be inferred is the opinion of the majority of the committee. Now, sir, I insist that the report of the committee does express an opinion upon the *constitutionality* of the Wilnot proviso, and in support of its constitutionality, through the irresistible inference and infallible implication which arise from the reasons it assigns why the committee *refrained* from engrafting the *proviso* upon the bill under debate. The report, then, if the computation which I have just made be a correct one, represents the sentiments of the *minority*, and that too upon a question of constitutional power! It is almost trite to say, what any one knows, that the report of the committee, without a precedent to the contrary, not only represents, but is the only official evidence of the sentiments of the *majority*. Yet, to all seeming, the report contains not their opinions; but just the reverse of it.



But the South has not only a just cause of complaint, that the decided opinion of a majority of the committee on so vital a question as the constitutionality of the Wilmot proviso was suppressed, but that the committee have not brought back to the Senate, for their solemn deliberation and vote, the only two of the original resolutions of the honorable Senator from Kentucky which bore the least semblance of protection and immunity for the institution of slavery in the District and at the South. These two resolutions were as follows :

"5th. *Resolved*, That it is expedient to abolish slavery in the District of Columbia, whilst that institution continues to exist in the State of Maryland, *without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.*"

"8th *Resolved*, That Congress has no *power* to prohibit or obstruct the trade in slaves between the slaveholding States ; but that the admission or exclusion of slaves brought from one into another of them depends exclusively upon their own particular laws."

It will be remembered that, when the resolutions were first introduced, an animated debate sprung up in the Senate, and that they were assailed at all points. Among other criticisms to which they were subjected, it was declared that they had nothing practical about them ; that they were mere *abstractions*. Against this charge the honorable Senator from Kentucky defended them with his usual warmth and eloquence. He maintained that they were *not* abstractions ; that all of them involved *principles*, and that he designed to have the deliberate vote of the Senate upon each of them. This declaration was highly satisfactory ; for, in these exciting times, when the South was menaced with being pressed down to the earth under the assailing hosts of the fanatics, a large and commanding vote of the Senate, asserting the rights and immunities of slaveholders in the District and in the States to be secure both under the plightings of the public faith and the prohibition of the Federal constitution, would have served two valuable purposes : the *one* in checking and discouraging the assailants in their mad career, and the *other* in its tendency to soothe and quiet the South, aroused and inflamed as she was through their menacing bearing and galling calumnies. It would not, indeed, have been any thing to *boast* of ; yet it would have been something in the way of a plea for further forbearance on her part, to have had assurances, through the solemn votes of both houses of Congress, that while they were stripping the South of her legitimate rights to share in the migration and settlement of Federal Territories, yet that the rights of slaveholders in the District and between the States would remain sacred and inviolable.

True, I would not have voted for the fifth resolution, without a reservation upon the question of *power*, which might have been implied in an amendment asserting that, "without affirming or denying a power in Congress to abolish slavery, it is inexpedient," &c.

Were there no other grounds of objection to this scheme of adjustment, (as most unhappily there are,) I must think that the withholding from the vote of the Senate the important resolutions, and the suppression of the deliberate opinion of the committee, that Congress possesses no *power* under the constitution to prohibit or abolish slavery in the Territories of the United States, constitute objections which of themselves would be almost insuperable.

If the committee has no other alternative to offer to the South but that presented by the compromise before me, let us by all means have the Wilmot proviso. Bad as that is, it scorns all disguises, and takes all of the responsibilities of all that it imports, and of all that can be imputed to it. Aggressions, in the garb of *aggressions*, can be confronted and resisted ; but aggressions, in the garb of *concessions*, that look you *fair*, but mean you *foul*, gilding the bolus which masks the hemlock, is the worst form that the worst wrong can assume. It deceives while it assails : it ruins while it allures. Sir, I mean no offence to any body, when I declare that this mode of botching up a settlement of great issues, to which sovereignties are parties, is something distasteful to my sentiments. The whole thing is unreal ; it has no substance in it.



Yet I was told, on yesterday, by my friend and colleague, (Mr. Downs,) that the South should not be too strict and peremptory in her requirements; that she should also make some sacrifices; and that, after all, what the compromise proffered to her was the best she could get. Has it come to this, Mr. President, that when we are pleading for our just and constitutional rights, we are to kneel down in supplication before the North, and be content and rejoiced that we meet not at her hands a still worse treatment—as whatever we have is at her mercy; as all she takes is hers, and all she leaves us is a boon?

Mr. President, I am at a loss to conceive how the committee can save itself from the reproach of having left undecided the most important matters of controversy existing between the South and the North. And I would ask, what would the fathers of the republic have thought, when they were preparing the constitution—that noble palladium of our right and our liberties—if the committee men, charged with framing that instrument, had reported nothing in the form of positive enactments, but merely a tissue of misleading alternatives, decisive of nothing, and leaving all in doubt as to what the committee deemed expedient to be done or let alone?

What have we in this compromise? Little indeed; very little: so little that I hardly dare to touch it, lest it should vanish into thin air. Others, however, with surer optics than mine, have found, or thought they found, in this project a protection to Southern interests, which all the magnifying powers of their eloquence have failed to bring within the scope and compass of my vision; and it has been insisted upon by the honorable Senator from Kentucky, and afterwards by my honorable colleague, that the South gained a great deal by the compromise, as that the two obnoxious *postulates* contained in the second of the original resolutions (touching the present existence of the Mexican anti-slavery law in the ceded Territories) had been extirpated from the *projet*, and were nowhere engrafted or to be found among the provisions of the bill before us.

I readily admit that these *postulates* were the most objectionable features in the original scheme; but is it true that they have been lopped away from the bill, and may not even now be lurking in some of the folds of its multifarious clauses?

Mr. DOWNS. If my honorable colleague will permit me, I will say to him that I do not consider that it was the province of the committee to judge of the constitutionality of any measure. I think it is a sufficient decision on the Wilmot proviso, that it was not sanctioned by the committee. If my honorable colleague wants an expression against the proviso, there is a distinct expression in the report that it is rejected. I read it yesterday to the Senate. This committee was not appointed as judges, but to report something that would be satisfactory to the whole country. I certainly never understood them as having to decide the whole question as to the constitutionality of the proviso. If that was to be the course, there is no settlement of the question.

Mr. SOULE. My colleague says that he considered the committee were not bound to adjudicate the matters which I have alluded to, as they had been raised only for the purpose of projecting a compromise; that they were not to judge of such difficulties, but to report back to the Senate something that would be satisfactory to all. I would ask him how could a compromise be effected at all, unless the matters to be adjusted were intelligibly disposed of one way or the other? If chosen, with one or two other members of this House, to decide a dispute between private individuals, would my colleague consider the arbitrament effected and conclusive, if it were couched in terms so equivocal as to be wholly incomprehensible to the parties to the reference; and if, when asked what it decides, he could say no more nor otherwise than that the arbitrators disagreed as to the precise import and meaning of the terms of the award which they had made? Sir, a settlement so extraordinary as this would be without a parallel, and undeserving of a name; it would unsettle every thing, and open up afresh all the issues of the contestation. I said such a settlement would be without a parallel; I was too fast, sir: the parallel stands revealed and surpassed in the provisions to be found among the bills, as will be more and more obvious in the progress of the debate.

Mr. DOWNS. If the Senator will point out any particular provision of the compromise that the committee do not understand, and understand alike, of any thing that he does not understand, I shall be much obliged to him. It is true, with me, as with every one of the Committee, that

there are several things in that report that I do not approve of; but I think I understand them, and the committee understand them. I think there is no ambiguity in them. Besides, as my colleague has propounded the question, I will answer; and I think it is no uncommon thing to settle disputes in this way—a thing recognized by the laws of our own State; and we have what are called amicable compounders, that do not decide legal points of the law strictly, but decide what is fair, just, and equitable, honorable to all. Such, I consider, was the duty of the committee which reported this bill.

Mr. SOULE. Truly so. The laws of Louisiana, and doubtless of other States also, recognize amicable compounders; and I am willing that the committee, for the sake of the argument, be viewed in the light of amicable compounders. But, then, amicable compounders always decide *something*, while the committee have left *every thing* undecided. Did I say that the committee were bound, and that we expected them, to decide the questions submitted to their consideration according to strict rules of law?

Mr. FOOTE. Will my friend bear with me while I ask him a single question, having been interested in the matter? When he voted to raise this committee, did he suppose it would be the duty of the Committee to decide the constitutionality of the Wilmot proviso, or to endeavor to set on foot some plan of adjustment that, avoiding the decision of disputed points, would yet settle all matters of difficulty upon terms of honorable and fraternal forbearance of the various sections of the Union?

Mr. SOULE. I will answer the question promptly. When I voted in favor of the resolution raising the committee, I did not expect that the Wilmot proviso would be acted upon by the committee in such a manner as to come back to us with an *abstract* declaration of its constitutionality or unconstitutionality; yet I did expect that some measure would be reported to the Senate, intimating the sense of the committee, and bringing the proviso itself *in its practical bearing*, to a test that would have enabled the country to know whether or not the *monster* was still alive.

But resuming the observations of my colleague, (Mr. Downs:) Why, does he suppose that I ever thought of suspecting that the members of the committee did not understand the meaning of the bills reported? I intimated nothing of the kind; and my colleague has strangely misconceived me. It would have been highly discourteous in me to treat thus slightly, not only him, but the other members of the committee.

I said, truly, that they could not agree as to the *legal consequences* of the measures reported; but, though the parliamentary courtesy of debate forced the concession from me that the committee understood the true import of their own measure, yet I had no control over that liberty of speech of the honorable members of the committee, through which they convinced me (as they must have convinced every member of the Senate) that, though all the members may have understood the true import of their own bill, it was not to be doubted that *they understood it in a different way*. What could be said, sir? There stood the honorable chairman of the committee insisting most earnestly and resolutely that, had he doubted at all that the Mexican law prohibiting slavery was in force in the Territories, he would have utterly opposed the whole section under discussion; which plainly means, if it means any thing, and the Senator from Kentucky never speaks without a meaning,) that, in such a conjuncture, he would have imposed no restraint either upon the local Legislatures or upon Congress, in enacting a revival of that Mexican law, or (what is precisely the same thing) the enactment of *the very Wilmot proviso ITSELF*, so determined was he that the anti-slavery restriction, in some name or other, in some form or other, should be applied to these Territories. On the other hand, there stands my honorable colleague, (Mr. Downs) who honored me with the high praise (which I should be as proud of, did I deserve it, as I am grateful to him for bestowing it) of declaring that he regarded my humble argument upon this point “as infinitely superior to that of the Senator from Kentucky,” and that he fully concurred with me in the conclusion it had brought me to—leaving the inference irresistible that he would not have voted for the bill without the section, nor for the section, but for the construction it bore (in his judgment) of putting an end to the Mexican anti-slavery restriction law, if it *was* there, and of keeping it out, as well



as all other anti-slavery restrictions, if it was not. If there were mere differences of views between the friends of the same measure, it would not have been at all surprising, as I had occasion to remark in the course of what I said the other day. Such things happen sometimes. Statesmen concurring in measures passed *sub silentio*, and without any consultation with each other, and found thereafter putting various and even opposite constructions upon the same clauses of the same statute, present clashing of opinion by no means without example. But instances of statesmen of high intellectual powers, after carefully and thoroughly weighing the inferences and reasons of each other, finding themselves at utter variance and in irreconcilable opposition and absolute antagonism to each other, and yet continuing to give a mutual support to the same measure, unshorn of its duplicities, present a case exceedingly rare, if it ever happened at all.

What, then, is it, I will ask again, that this famed plan tenders to the country? Three or four bills, prepared with a view to the final settlement of the difficulties which so unhappily divide the two great sections of this empire; three or four bills, well considered, well understood no doubt by each member, and acceptable to each in the interpretation he gave them, yet so put together, so replete with ambiguities, that their authors cannot agree as to what will be their legal bearing and consequences, when brought to the test.

Mr. DOWNS. I dislike very much to interrupt my colleague. But if he will state the point as to which the committee disagree, and the terms, I shall be pleased to hear it.

Mr. SOULE. I will do so with great pleasure; and in order to satisfy the gentleman, I shall avail myself of the disclosure which he made in his speech of yesterday, when he stated that there were many provisions in the bill about whose legal meaning and import he could not agree with other members of the Committee. Did I understand what my colleague said on the occasion?

Mr. DOWNS. I trust my honorable colleague will also recollect that the chairman (Mr. CLAY) at the moment said I was mistaken in supposing we differed about the fugitive slave section; that he perfectly agreed with me in my construction of it.

Mr. SOULE. I am still more surprised; and the difficulty is greater than I supposed. Then the honorable Senator considered on yesterday that he had not agreed with the chairman, (Mr. CLAY,) and he probably would still be under that impression, had not the honorable Senator assured him from his seat that he was mistaken, and that they were agreed! Now, Mr. President, I wish to be clearly understood as to my appreciation of the disagreement which separates me on this occasion from my friend and colleague. It is to me a subject of unfeigned concern and of deep regret that I find myself at points and antagonism with him, and on an issue like this; for there is none whom I hold in higher esteem, and to whom I would like to show a readier deference. I feel assured, however, that this disagreement will in no way weaken those ties of mutual respect and friendship which have heretofore united us, and which, for the good of our common State, as well as for my own personal satisfaction, will, I hope, steadily strengthen and last long. Yet, so it is; and while I am on this subject, I had as well take leave to express my surprise at the language which my colleague (though unintentionally, I am sure) thought proper to use, when, answering one of my arguments of the previous day, he exclaimed, in a tone full of significance, "Shall this warfare last forever?"

Mr. DOWNS. If there was any thing in any remarks I made showing any thing but a kindly spirit towards the honorable Senator, or in the slightest degree construed in such a sense by him, it was not my intention. I alluded to no "warfare" between him and myself. I had no such idea. I referred to the "warfare" on the slavery question. Though I did not, in the heat of debate, on a subject of great interest, always form my sentences with that precision, elegance, and polish which characterize my honorable colleague, still my intentions, my feelings, my wishes, with regard to him, are as kind and friendly as they ever have been, and I trust ever will be.

I wish nothing to occur—nothing has occurred, and nothing will, I trust, occur—in this debate, however we may differ, to disturb, in the slightest degree, the cordial relations which have always existed between us. If any thing I said has wounded, in the slightest degree, his sensibilities in any way, it was the furthest thing from my intentions.

Mr. SOULE. There was no necessity for the explanation which my colleague has just given of the language which he used on yesterday. Had it been still stronger,



and more pointed than it was, being well assured, as I am, that it could not but have been delivered under the promptings of his heated zeal, and without the least intention to wound my sensibilities, I should have met it with the best feelings. I, indeed, would even now abstain from all reference to it, were it not that, as it will go to the country and be read with peculiar interest throughout our common State, justice to myself requires that I should say something in vindication of the course which, by implication at least, it seemed to impeach.

I was going to remark, when my colleague interrupted me, that I had in no manner shared in the warfare about which he is now so deeply concerned—otherwise, at least, than in joining many of those who had heard him on a former occasion, and on this very subject, in the praises which they bestowed on the manly independence and boldness with which he, from the outset, assailed and repudiated the very propositions which he now defends with so much warmth and earnestness. If I have erred in the course which I have pursued—if I am still on the wrong tack with respect to the matters embraced in this compromise—I may, without doing my colleague the least injustice, disburden myself of a great share of my responsibility, by laying my delinquencies to his door; for he will not take it as unkind in me, if I should remind him that he led the way in the opposition which was manifested in the first instance to the scheme embraced in the resolutions of the honorable Senator from Kentucky, and afterwards to the compromise reported by the committee, on its first appearance in the Senate. Being among the youngest of the Senators who were to take a share in the debate, I did not venture to settle definitely upon the part which it might become me to act, until I was able to direct my steps by those lights which I knew his fuller knowledge of public affairs and his larger experience in parliamentary life, would cast upon the path opening before me; and he will pardon me if, having received from him those first impressions which roused me to resistance against this compromise, I prove to be more steadfast than himself in the distrust and aversion which a memorable speech of his own has awakened in my breast and keeps there.

But to recur to my subject: The friends of the compromise exult in the fact that the two propositions, injuriously affecting the slave interests, contained in the second of the original resolutions of the Senator from Kentucky, have been excluded from the bill, and insist that, in this at least, the compromise improves the terms allotted to the South. Will my colleague tell me whether there be any thing in the report repudiating the doctrines of these propositions? He certainly was under the impression, and is still in the belief, that they have been actually repudiated; and he has referred me to the very part of the report from which I had intended to read, in order to show that, far from this being the case, the obnoxious propositions were (most adroitly, it is true, but) most unequivocally ingrafted in the report accompanying the bill. What was it, in these propositions, which brought from the South her deep dissatisfaction and her loud complaints? It was the irresistible implication it carried with it, that if slavery was established by law in the Territories, or was likely to be introduced there, not only would the power of Congress to abolish it have been asserted, but its exercise declared *expedient*. And what less than this does the report of the honorable Chairman announce? Why, it announces exactly, not in words, but in sense, what this resolution had spoken forth before; what the Senator's speech introducing that report proclaimed afterwards; and to make the matter free from all doubt, and do the honorable Senator full justice, I shall now give him the benefit of his own views, in his own words:

“The bill for establishing the two Territories, it will be observed, omits the *Wilmot proviso*, on the one hand, and on the other makes no provision for the *introduction* of slavery into any part of the new Territories.”

Had the report stopped here, my colleague might be right in the interpretation which he puts upon it; but it explains the reasons why the obnoxious *proviso* was not inserted in the bill, and thus justifies its exclusion:

"That proviso has been the fruitful source of distraction and agitation. If it were adopted and applied to any Territory, it would cease to have any obligatory force as soon as such Territory was admitted as a State into the Union. There was never any occasion for it to accomplish the proposed object with which it was originally offered."

Had, therefore, the *occasion* existed, it might have been justified. The want of an *occasion* is the only plea *for its not being there!* The honorable Senator shakes his head, I see, and finds, perhaps, that I am placing a forced construction upon his words. I would be loth to do him any injustice. But he says, further, "it has been clearly demonstrated by the current of events." Is that evident? How has the current of events demonstrated that there was no occasion for the *Wilmot proviso*? Why, by the coming of California into the Union *with it*; and furthermore:

"California, of all the recent territorial acquisitions from Mexico, was that in which, if any where within them, the introduction of slavery was most likely to take place; and the Constitution of California, by the unanimous vote of her Convention, has expressly interdicted it. There is the highest degree of probability that Utah and New Mexico will, when they come to be admitted as States, follow the example."

Such are the reasons and motives set forth by the committee, through their organ, for not having inserted the Wilmot proviso in the Territorial bill. *There had never been any occasion for it, as was "demonstrated by the current of events."* California presented herself for admission with the proviso in her constitution, and it was likely that Utah and New Mexico would follow the example!

Yet my colleague was satisfied, and thought that Southern slaveholders ought to be content, inasmuch as, if they actually possessed any right, under the constitution, to carry slaves there, nothing in the bill could impede them in the exercise of those rights. But I have already shown, and I think conclusively, how illusory would their deductions and expectations have been under the clause in the 10th section divesting the local Legislature of all authority to pass such laws and provide such remedies as would ensure *protection* to the slaveholder, and secure him in the enjoyment of his property, imposing no duty on Congress to do so, with a reservation of an absolute veto upon all local legislation.

I must now notice another argument of the Senator from Kentucky, (and, if not meant as an argument, personal, and conveying a reproach,) which I would rather have been spared; The honorable Senator most exultingly, as it seemed—and I must think against all parliamentary usage—brought to the notice of the Senate the very important circumstance that the clause in the 10th section which the amendment sought to modify had been moved in committee by my own colleague, (Mr. Downs,) and, from the emphasis and relish with which he urged that fact against me, I could not but be struck with the extraordinary pretension it implied, that I ought not, on that account, to have questioned either its orthodoxy or its conclusiveness. Whether this circumstance was brought forward as an argument or as a sentiment, I must think it came with but ill grace from the honorable Senator. Above all other Senators here, he holds (if I have understood him aright) that his position on this floor is one of absolute Senatorial independence, and that he is responsible to his own judgment and conscience alone for whatever he says and does here. At an early day of the session, and upon the point now under debate, we all heard him exclaim, with an ardor and warmth that brought down from *certain portions* of the galleries loud plaudits;—*that he would never vote, and that no earthly power should ever induce him to vote, for the admission of slavery into Territories now free.* Whether the Senator's views of Senatorial responsibility are right or wrong, is no business of mine, and I meddle not with it. But, while he holds these opinions, how does it become him to rebuke other Senators for exercising that free judgment and Senatorial independence which he claims for himself? And when he so unceremoniously gives up the obnoxious clause, after having doubtless concurred to its insertion in committee, how can he pretend to hold me fast, not to any opinion of mine, but to that of my colleague? But, sir, be the paternity of that clause where it may, how can its merits or demerits be enhanced or impaired by it, when it comes here with the sanction of the committee, and must stand or fall by its merits alone?



A fresh sanction has been claimed for this clause, as being couched in the identical terms adopted by the eminent statesmen who prepared the Clayton compromise. This was undoubtedly true of the original *projet* of that measure which I have now before me. In the very words of the new compromise, which to me are so objectionable, it declares, among other things, that "*no law shall be passed respecting slavery.*" But my colleague overlooked altogether the important circumstance that this language proved quite as distasteful and exceptionable to the Senate of that day as, I think, it will prove to the Senate of this. The obnoxious words were stricken out, and on motion of a Senator from Maryland (Mr. Johnson) the following substituted: "respecting the prohibition or the abolishment of slavery."

But why carry this argument further? The question is now settled; the battle is over; our adversaries have surrendered, and surrendered verily, at discretion. The honorable Senator from Maryland (Mr. PRATT) has kindly handed us this morning an amendment, proffered, as I understand, with the sanction of the honorable Senator from Kentucky and his friends—embodying, in my humble judgment, every matter provided for in the pending amendment of the honorable Senator from Mississippi, (Mr. DAVIS,) and accepted by him in lieu of his own.

The Senate was told on yesterday that there was no occasion for allowing the Territorial Legislature the power which the amendment acknowledges by implication; and this on the ground that slaves being *property*, the laws applying to all other kinds of property, would equally apply and extend to them. When my honorable colleague comes to consider more seriously of that matter, I have no doubt he will admit that this is by no means a satisfactory solution of it. Slaves assimilate to other property interests in two particulars only: the one is, that, under the Constitution and laws, they are equally *property*; the other, that they are equally entitled to *protection*; but the laws regulating and protecting either widely and necessarily differ from each other, as my colleague will admit, when he calls to mind the great number of laws we have in Louisiana, regulating the functions of slavery, and protecting the right of the master to the services of the slave. Why, sir, if the act of 1793, providing the extradition of fugitives from service were repealed, and Congress should refuse to pass any further law upon the subject, and all laws in the free States touching the matter were abolished, would the general laws, (in Pennsylvania, for instance,) protecting the rights of owners with respect to other kinds of property, be construed as authorizing the restitution of his slave to a citizen of a slave State? No, no; and it would be equally in vain that he would expect protection for slaveholders in the new Territories.

Mr. FOOTE. Will the honorable Senator from Louisiana bear with me a moment?

Mr. SOULE yielded the floor.

Mr. FOOTE. I simply wish to inform him of a fact of which he is evidently not aware. The amendment which he speaks of as a substitute for that portion of the bill to which he is objecting was drawn up by the Senator from Indiana the day before the Senator from Louisiana, who is now addressing the Senate, commenced his speech. It was handed about the hall, agreed to on all sides, and offered to the Chair before, but was decided not to be in order. It was embodied in the speech which I made last week, and which was printed two or three days since, before the honorable Senator commenced his speech. So that he will perceive, I suppose, that although it may be a very signal triumph, it was conceived and agreed to on all hands before his speech was made. In addition to this, I will say that when this proposition, originally in the Clayton compromise bill, was under discussion here, the very language which the gentleman from Louisiana (Mr. DOWNS) is said to have offered in the committee, was proposed by the present Attorney General of the United States, a Southern gentleman and a profound jurist. I suggested the very objection to it which the Senator from Louisiana (Mr. SOULE) has suggested, that it was perhaps more plausible than solid, and I suggested the amendment to which the then Senator from Maryland (Mr. R. JOHNSON) at once acceded, and it became incorporated in the Clayton compromise bill in its present form. That is the history of the affair. It originated with Southern gentlemen, and, so far as I know Northern gentlemen never objected at all to the modification. Certain it is that the modification now proposed, in order to remove the objection to the bill, was agreed to on all sides of the House before the honorable Senator from Louisiana (Mr. SOULE) addressed the Senate.



Mr. DAVIS, of Mississippi. My colleague is entirely mistaken in supposing the amendment now pending to be the same as that suggested by the Senator from Indiana.

Mr. FOOTE. I was simply replying to the Senator from Louisiana, and did not refer to the amendment offered by my colleague. I mean to say this. The Senator from Louisiana just now said that the objectionable phraseology in the bill as reported from the committee was effectually cured by the introduction of other words which are tantamount to the words in the Clayton compromise bill. I addressed myself to that point especially, and I said that that particular modification had been agreed to before the Senator from Louisiana (Mr. SOULE) addressed the Senate at all. I say furthermore, now, what my colleague well knows also, that immediately upon the suggestion of the modification of that amendment, which is now universally satisfactory on this side of the house, it was agreed to on all sides of the house. The honorable Senators from Kentucky, (Mr. CLAY,) Massachusetts, (Mr. WEBSTER,) New York, (Mr. DICKINSON,) and others, all agreed to it without the least difficulty, and never made the least obstacle. If the amendment of my colleague (Mr. DAVIS) had assumed this form in the first instance, and had not used the term "ownership," which seems to some to imply a disposition on the part of Congress to afford especial protection to property in slaves in the Territories, (although I do not think that it bears that construction,) I have no doubt that it would have been immediately acceded to on all sides of the house.

Mr. DAVIS, of Mississippi. I did not intend to argue the question of who had got the victory, further than to say that this bill as originally reported contained an odious discrimination against slave property, and that it is true that an amendment in that respect has been finally acceded to. Beyond this, sir, it is also true that nobody on the other side of this question ever proposed to modify the bill so as to meet our views until the amendment first offered by me had been argued; and, finally, those on the other side of this question have acceded to the amendment, but adding to it that which I considered of no importance at all. All that my colleague (Mr. FOOTE) suggested that he would move, and could not move because my amendment was before the Senate, was to declare that the Territorial Legislature should not admit or prohibit slavery. That I consider to be a constitutional question, above Congress and above the Senate; but what we have from the first contended for, and to the last adhered to, is this, that the Territorial Legislature shall be permitted and required to give such protection to slave property as is extended to all other species of property; and if that had not been incorporated in the substitute for my amendment, offered yesterday by the Senator from Maryland, (Mr. PRATT,) I, for one, would never have accepted it.

Mr. FOOTE. I merely rise to say that, like my colleague, all of us entertain the opinion that substantially there could be no change that would be effective except such an amendment as that now proposed. If my colleague will simply look at a speech of mine, made and printed some time before this discussion came up, he will find that I then advanced this view of the subject, that no restriction could be necessary, inasmuch as the Territorial Legislature, in my judgment, could have no such power to legislate except for the protection of slavery.

Mr. HALE. If the Senator from Louisiana will allow me a moment, I only want to make a single remark. The honorable Senator from Mississippi says that the amendment draughted by the Senator from Indiana was shown all round the Senate, and that every body assented to it. I think the honorable Senator has fallen into the same mistake which he fell into once before; he only showed it to the leading men. [A laugh.] So far, sir, as I am concerned in the exercise of my right as an humble individual—

Mr. FOOTE. I do not really know what the Senator's object is. I said nothing about leading Senators.

Mr. HALE. Mr. President, I do not know then what the Senator means by the expression. I was aware that gentlemen from his section often looked upon the whole North as rather an unimportant division of the country; and, being certain that the amendment had not come to me in passing all round the hall, I was unwilling to rest under a wrong implication that it had; for I am opposed to these amendments, one and all. I prefer the original bill as it came from the committee. Let us have the whole thing; I want to take the thing as a whole.

Mr. FOOTE. I said that it had been agreed to all round the house, and then I limited the remark by specifying those gentlemen friendly to the measure. I purposely qualified the language of my remark, and I cannot see why the Senator from New Hampshire carps at it.

Mr. HALE. I do not carp at the phraseology, but when the vote is taken it might give rise to mistakes if it went forth that this amendment was assented to on all sides. I have neither directly nor indirectly assented to any provision or amendment of this sort, and I shall vote against them. I prefer the bill as it came from the hands of the committee to any of these amendments.

Mr. SOULE. I am much surprised, indeed, that my distinguished friend should grudge to my remarks so slight a merit as to have seconded with their feeble aid the able effort of his honorable colleague, (Mr. DAVIS,) whose sagacity first unmasked the mischiefs lurking in this ambiguous section, and to whom is due all the credit and whatever of triumph there may be in bringing the matter to the Senate's notice. My contributions to the victory were but those of the humble

gleaner in a well-reaped field ; and if my worthy friend claims the spoils for others, why, regarding the amendment as outvaluing the triumph, let that be *ours*, and the other *theirs*. If the Senator would have considered for a moment of the disadvantages and embarrassments which beset me at every term of the sentence, in the whole progress of the argument, on account of my speaking in a language not originally my own—how the pent-up thoughts crowd on one another, in awaiting the words which are to give them utterance—if, moreover, he would make some allowance for one who, with all these imperfections and deficiencies, is found engaged in a conflict where he has to encounter all the strategy of the most consummate marshalship—alas, sir, he would no longer impute to me so vain a thing as even a hope of triumphing over such odds as I have before me.

We are told that the amendment now in debate is not deemed necessary for the protection of slave property in the Territories. My honorable friend forgets that a very strong argument was urged on yesterday, on the assumption that, unless the obnoxious clause, against which I have been debating, had been inserted in this section, slavery would have been in imminent and constant peril there, supposing that it could exist under the constitution ; for, my colleague went so far as to say that, without it, there was nothing to prevent the Territorial Legislature from meddling with slavery and abolishing it, nor Congress from interposing its *veto*, should the Territorial Legislature have granted it protection. But, while it was insisted that the clause ought to remain as a protection, we were assailed for guarding that very Legislature from all inhibition that might prevent it from affording slavery, *if* it should exist there, such *police* ordinances as would regulate its function as property : in other words, while, upon one hand, the section was defended on the ground that it secured slave property against all interference on the part of the territorial authority ; on the other, the amendment of the honorable Senator from Mississippi was assailed on the ground that by giving to the Legislature, by implication, power to afford protection, it actually surrendered the doctrine of non-interference !

Mr. DOWNS. I am very sorry to interrupt my honorable friend ; but I beg leave to state to him that I said I was in favor of the provision of the amendment as it now stands.

Mr. SOULE. I am glad to hear this. Such is my confidence in the honesty of purpose and the exalted patriotism of those who advocate the compromise, that when this matter comes to be thoroughly understood, I feel assured that many of those who now oppose us will be found to stand by us, upon the same platform.

In connexion with this, let me remark that we are accused of unwillingness to be satisfied in any way, even should the measures be modified to our liking. I might complain of the gross injustice of such an imputation, and even recriminate and strike back with no small advantage ; but I forbear. Well, sir, how stands the fact ? We have opposed the 10th section on the ground that, under the guise of granting the South *something*, it actually stripped her of *every thing* ; yet, after strenuous efforts from the other side to maintain that section as it is in the bill, we find our opponents surrendering the disputed ground, and admitting, by implication at least, the correctness and justice of our opposition. Let another part of the compromise meet a similar fate, (I allude here to the admission of California, unqualified as it is in the bill,) and as the other matters are such as must be of easy adjustment between us, I hesitate not to say, we will easily be induced to vote for the bill, and to assist in securing its passage.

Sir, I have ever been in favor of admitting California with suitable boundaries, (as expressed in the first of the resolutions of the honorable Senator from Kentucky,) and with such guaranties on her part as will secure the title and rights in the United States to the primary disposition of the public domain, &c. against all interference and danger. But this question belongs to another part of the subject before us, and will come up more appropriately when the general merits of the bill shall be discussed, or when special amendments may be pending, with a view to attain those important ends. I wish to be understood as remaining uncommitted



as to my final action upon the several provisions of this bill, except and to the extent that the debate progresses. I am not and cannot be opposed to the settlement of the difficulties which distract the country upon any just terms, come from what quarter they may. Let the bill before us be amended and improved in those parts which, in my opinion, are not only obnoxious, but threaten the utter annihilation of Southern rights and equality, and I am willing to yield it a most cordial support.

Amongst other remarks which fell from my colleague on yesterday, while he was attempting to prove the inexpediency of the amendment under debate, there was one which struck me as somewhat strange—I mean that having reference to the non-existence of police enactment in Louisiana, regulating the functions of slavery, prior to 1812. Let me remind my colleague that there is no State in the Union where that matter is so thoroughly methodized and minutely regulated as in Louisiana, where prevails, from the very organization of the colony, a complete code of laws covering the whole subject, going so far back as the early days of Louis the Fifteenth's reign.

We were told, also, by the honorable Senator from Kentucky, that objections to the amendments reported to the fugitive slave bill came with but small grace from Louisiana, as she had but slight interest in the question, while these amendments were satisfactory to Senators from the States *mainly* interested. The Senator treated *my* interference as out of place and intrusive, as it raised objections to a measure which could in no manner affect the interests of my constituency. Sir, I do not understand, nor am I willing to submit to, this sort of supervision over my action here, and still less to any assumption to control it. Will the Senator tell me where he finds a warrant for *his* interference with my Senatorial duties here? Can he adduce any reason why I may not enjoy, undisturbed and unquestioned, all that freedom and independence of action which he asserts for himself? I claim nothing more, and the honorable Senator will understand that I can be content with nothing less. I can assure the honorable Senator that he has fallen into a great mistake in supposing that Louisiana had but small interests of her own in the fugitive slave question. Her interests are large and her losses heavy. The immense number of river and sea crafts which annually visit her principal port, (New Orleans,) coupled with the vested privilege of mariners and boatmen to moor in front of her principal plantations, day and night, furnish facilities almost unexampled for the abduction and escape of slaves.

Louisiana, then, having a large interest at stake in the reclamation of fugitives from service, has a corresponding interest in opposing and arresting all obstructions to the exercise of her rights. The section reported by the Committee, besides other requisitions unknown to the existing laws, and certainly not contemplated by the Constitution, imposes upon the slaveholder the obligation of procuring a record from a competent court exhibiting both the fact of ownership and escape of the slave sought to be recaptured—an obligation which the amendments recommended by no means leave optional to the master, as my colleague seems to suppose and argues, but which is made a *necessary* prerequisite to the delivery of the fugitive, as plainly appears from the words of the section:

“And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, *in addition to what is contained in said record*, of the identity of the person escaping, he or she shall be delivered up,” &c.

Now, under the Constitution of Louisiana, such a record could in no way be considered as a judicial proceeding, which imports a suit, for, a suit must represent and embrace more than one party; and being a suit, and the slave absent from the State, the courts of Louisiana could have no jurisdiction to entertain a judicial proceeding in anywise affecting his rights and interests, while he was absent and unrepresented. Moreover, if there cannot be a suit, how can there be an adjudication? Our courts of justice are rigorously inhibited by our Constitution from



interfering with any thing that is not *strictly judicial*; and such a record, therefore, could not be obtained.

I was asked whether the *South* ought not to make *sacrifices*? Most undoubtedly, if necessary, and to the full extent of any sacrifices made or proffered by the North. Her duties enjoin upon her not a doit more. I would wish that the South would guide herself upon the line of conduct that was marked out on yesterday by my colleague with respect to States in general. When a State is weak, she should be careful of her rights, and cautious that they were not invaded. When a State is strong, she may be less strict, because of her ability to resist oppression. But will my colleague permit me to remind him that while, on the one hand, he recommended to the South forbearance, on account of her strength and power to resist, on the other he made a strong, and, indeed, an impassioned appeal to her, calling her to unite on account of her own weakness? And feeling myself as my colleague seemed to feel on yesterday, when he ended his speech, that the South has come to be the weaker of the two contending sections, I would recommend to her to stand by the rights for which she is now struggling, unless she chooses rather to wait until it is too late, and when nothing can save her from being crushed in the struggle.

I have not been of those who were ready and willing, at the beginning of the session, to stake the very existence of this Confederacy upon such an issue, unless I should be convinced that it could not possibly be averted with honor and safety to Southern institutions. I am for peace and concord, for harmony and for union, but I am for justice also; I am for a strict adherence to the precepts of the Constitution; I am for equal rights among the States, and for the erecting and upholding of such barriers against Federal encroachments as will keep the power of this Government within the bounds assigned to it by its founders. And if all this has to be surrendered—if the South is to be immolated, let her face her doom, but with dignity and resolution, and let no blush cover her cheek.

Mr. MASON obtained the floor.

Mr. DOWNS. Mr. President, I wish to say only one or two words—

Mr. CLAY. Will the Senator from Louisiana allow me one word. I do not wish to interfere with the Senator if he wishes to avail himself of an opportunity of replying, but I desire an explanation from the Senator from Louisiana who has just taken his seat. I understood the Senator to say that the committee had held to the eye one thing, intending at the same time another and a different thing—intending to cover the question with a “drapery” or “trickery,” I did not hear the precise expression, but I thought it was one or other of these words.

Mr. SOULE. Oh, no; the Senator from Kentucky is mistaken.

Mr. CLAY. Well, then, I want to know what the Senator did say?

Mr. SOULE. The honorable Senator gives to my language a meaning which I had not intended it should convey. Speaking of the measures in progress of debate, and commenting upon them, I said, indeed, that “they spoke to the eye what they meant not to the sense,” intimating thereby that they were so worded that a careless reader might be led to imagine that they imported something which, in fact, they did not import. I did by no means intend imputing to the committee a deliberate design to impart to the measures which they recommended, and with a view to mislead, the duplex meaning which I thought I discovered in them; I intended only to signify that such would be the effect of the phraseology which had been adopted, and that it would unavoidably be misapprehended. That such would be the case is most clearly shown in the fact, now apparent to all of us, that those who concurred in the bill are still in disagreement as to the legal bearing of some of its most important provisions. Besides, from the manner in which I have conducted my humble share in this important discussion, I had hoped I would have been spared the misapprehension that I had designed any thing that was unkind or disrespectful to the honorable Senator and his colleagues.

Mr. CLAY. Mr. President, I certainly felt gratified by the very unmerited compliment which the honorable Senator chose to pay me personally; but that does not satisfy me if, as I supposed, he intended to cast reflections on the motives of the committee by intimating that it was their purpose to practice any deception towards the Senate.

Mr. SOULE. Truly, sir, the honorable Senator bears down hard upon me; for, even supposing that any unseemly expression had escaped my lips, ought I not to have met at his hands somewhat more of indulgence, and I might say of strict justice, considering that I was wrestling with the peculiarities of a language not my own, whose vocabulary is so apt to rebel against my best inten-

tions? I questioned the motives of no one. I believe them good, and do not doubt at all the purposes of the committee were most patriotic and honorable.

Mr. CLAY. I am satisfied. As the chairman of the committee, and as one of the committee, I certainly would not have allowed without suitable explanation any remarks reflecting upon the purposes or intentions of that committee.

Sir, I should be glad if time permitted to make a reply to the honorable Senator, but I shall have other occasions to do so. But will he and the Senate allow me for a few moments only to make one or two observations?

Now, sir, what is the course of the honorable Senator with respect to these resolutions of mine, and the report of the committee? The Senator takes them up and compares them together. *Cui bono*? The resolutions were the resolutions of an individual; the report of the committee is the report of an aggregate number of gentlemen sent out for the purpose of considering these subjects. To bring, therefore, the report to the test of the resolutions is to suppose that I, who was alone responsible as the author of these resolutions, constituted the committee of thirteen to act upon the whole of the subject. He says that in my resolutions the South was promised suitable limits to California. Well, sir, the committee have said that the limits of California as proposed are suitable limits, and I never intended to exclude the consideration of the limits which California took for herself.

But I do not mean to-day to go into the subject, except to make one additional observation.

Sir, the Senator is not satisfied with the repudiation in the bill of the Wilmot proviso. No, sir, it is not there, and all that the South has been struggling for for years has been to avoid its being put there. But he wants more. He wants an argument against it; he wants it denounced as unconstitutional. Now, let me put this case. The referees are sent out to make a decision upon a case referred to them. Although they agree in the decision, each having his peculiar reasons, but all uniting in the conclusion, yet if they do not agree in the premises, and in the arguments, according to the doctrine of the Senator their award is worth nothing.

Sir, the Senator tells us that he is for compromise and for the Union, although I was sorry to hear him concluding his speech by saying that he did not consider disunion so great a calamity as others did.

Several Senators around Mr. CLAY. "No, no;" "he never said so;" "you are mistaken."

Mr. SOULE. Will the honorable Senator excuse me for interrupting him; but I must say, distinctly, that I never said anything of the kind. The Senator does me injustice. I most emphatically deny having ever said anything of the kind.

Mr. CLAY. I understood the Senator most distinctly to say that he did not see anything in the calamities which would result from a dissolution of the Union.

SEVERAL SENATORS. "No, no." "You are wrong, he did not say so."

Mr. SOULE. No, sir; that *could* not be. I said nothing that *could* have conveyed any such meaning. On the contrary, I most unequivocally declared that I was not of those who would stake the perpetuity of the Union upon the issues before us, should it be possible to avert it by any sacrifices we could make without dishonor, although I apprehend they might seriously endanger it.

Mr. CLAY. I am very happy to hear it.

Mr. SOULE. Sir, there could have been no mistake—no misunderstanding. Every Senator here, I feel assured, understood me differently. What I did say is this: that if the South was to be crushed to the ground, at least she should be suffered to fall with dignity, and so as to command the respect, and not to attract the insulting pity of her adversaries. [Applause.]

Mr. CLAY. I am, indeed, happy to hear these sentiments from the honorable Senator, but he will allow me to say, that although he may not be desirous—and am I sure he is not—of a dissolution of the Union, the course which he may happen to take may possibly lead to such a consequence at no distant day. He said that he did not like this compromise. He complained that while he was restricting himself to the subject under debate, he had been misrepresented by me as having travelled over the whole compromise. Now, I appeal to the Senate whether the Senator did not take up every topic in the report and comment upon, and criticise, and reject it. I hope, Mr. President, that, when this measure which has been before the committee shall have received all the improvements of which it is capable, of which nobody will be more desirous than the committee, the Senator may yet find it in his power to concur with the committee in their efforts to settle these questions.

Mr. SOULE. I should be most happy if I am able to do so.

Mr. CLAY. I have already said that at this hour, and for other reasons, I will not detain the Senate now, especially as the Senator from Virginia, (Mr. MASON,) having obtained the floor, desires to speak. I forbear, therefore, making any further observations until some future occasion.







SPEECH

OF

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MR. SOULE, OF LOUISIANA,

ON HIS

SUBSTITUTE FOR THE CALIFORNIA BILL.

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IN THE SENATE OF THE UNITED STATES, JUNE 24, 1850.

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WASHINGTON:

PRINTED BY JOHN T. TOWERS.

1850.





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## SUBSTITUTE FOR THE CALIFORNIA BILL.

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The Senate having under consideration the special order, being the bill to admit California as a State into the Union, to establish Territorial Governments for Utah and New Mexico, and making proposals to Texas for the establishment of her western and northern boundaries, Mr. SOULE said:

I rise, Mr. President, to state the reasons that will compel me to resist, and which, in my humble judgment, ought to induce the Senate to delay, the admission of California into the Union until she has executed a full and solemn relinquishment of all rights and pretensions to the public domain within her limits, and until she has restricted the area of her jurisdiction to suitable bounds and dimensions. When that is done, she may come at once and claim her rank among the sovereigns of this great Confederacy. I shall be the first to hail and welcome her; for I harbor no feeling, I entertain no designs that should alarm her friends or make them distrustful. But, while I am for throwing open to her every avenue through which she may surely and promptly reach us, I cannot consent to let her ride over the rights of the South and the best interests of the Republic. Sir, many as are the objections which I might urge against her being admitted at all, under present circumstances, I shall not overlook the exigences of her present condition, and the unjustifiable neglect through which they were brought about. I know, sir, that we have been unwarrantably delinquent in her case; and I am willing, on that account, that we should treat her claims with the highest degree of indulgence, that we should clear the way for her from all *removeable* encumbrances and obstructions, and that is what my substitute aims to effect. Had California been provided, as she ought to have been, with a government that would have enabled her to prescribe rules for the guidance of her citizens—to extend security to their lives—to insure protection to their property—we would not at this day be engaged in this disturbing and inauspicious discussion. Yet, sir, it should not be forgotten that when the attempt was made in the two last Congresses to organize a government for the newly acquired Territories, it was resisted by those who are now the most anxious for the immediate and unconditional admission of California—by those who had originally opposed her accession to the United States, and had voted against the treaty annexing her. It was resisted on the avowed ground that, as no hope could be indulged that the Executive sanction was to be obtained to any bill

imposing the unconstitutional proviso which a blind fanaticism sought to insert in it, it was better to leave the Territories exposed to all the inconveniences and dangers of anarchy, than to suffer the South to have the least chance of sharing in the profits of a conquest for which she had poured out so lavishly her treasures and her blood. It was the triumph of numerical force over law and justice, over reason and right, over the spirit and letter of the Constitution. And for what?—for what? Why, *Slavery* was to be excluded from these new acquisitions! It was an evil not to be suffered to go a foot beyond the limits within which it was then encircled.

Sir, much has been said about slavery; and I will not stop to consider here whether it be a blessing or an evil. War is an evil;—and your statute-book shows that there may be *just* and *necessary* wars. The Territories about which we are now debating were the immediate fruits of war; and I am yet to learn that those who denounced that war to the civilized world as a social and religious crime, have been deterred by any scruples from sending their stout and hardy sons to dig out from the accursed acquisitions the contaminated and corrupting treasures they contain. Government is an evil—a great and stupendous evil—a vast net of servitudes covering a handful of liberties; yet, sir, we owe it to the protective influence of government that we can live in peace, in comfort, and in happiness. If slavery be an evil, what right have Northerners to denounce and to cast it against the South as a reproach? Who implanted it where it now prevails? Who nourished the slave-plague from 1787 to 1808, and gathered its victims on these shores, and reaped the spoils of the adventures? Why, their very fathers and fathers' fathers! They, it was, who bequeathed it to us, and at all events, supplied fully three-fourths of the original materials out of which sprang the present stock. And, sir, among those who have engaged in the unholy crusade which has been raging for these fifteen years past against the South, how many are there who still dance on the silk carpets and look out from the gilt balconies that were paid for with the profits of the accursed trade! They enjoy remorselessly the unholy inheritance, and never think of atoning for its hellish origin *otherwise* than by their foul and ceaseless assaults against those whose only sin is to have made themselves the instruments and victims of their own fortunes.

How elastic is the conscience of man! He thunders out his anathemas against the vices and corruptions of the day, while he exults, with an insulting ostentation, over the displays of the very profits which he derives from them!

These Territories, now the object of so much debate, were stigmatized (if I recollect aright the language of the peace fanatics of the day) as the fruit of spoliation and theft. But now they insist upon having it all to themselves! Ah! but for slavery—slavery! Why, sir, it is as ancient as civilized man. It has pervaded the whole world, and carries along with it, through the passing centuries, the sanction of the highest names and of the most revered authority. It covers still now by far the largest portion of the inhabited globe, and, (I say it in deep sorrow,) under disguised names, even where liberty is said to prevail, constitutes the condition of nineteen-twentieths of the human race. It is the work of ages, which ages alone can remove. Those who denounce and calumniate it would certainly perform a nobler task if, instead of wast-



ing their energies in impotent strivings for an impracticable emancipation, they applied them to the propagation of those solemn truths and salutary doctrines that tend to mitigate its hardships, and might awaken their own minds to the mysterious callings which an All-wise Providence may hide under it.

But, sir, I am wandering from my subject, and I hasten to return to it. One of the objects which I have in view in presenting my substitute is to secure in the United States the right to the primary disposal of the public domain in California.

The third section of the bill reported by the Committee provides

That the State of California shall be admitted into the Union upon the *express condition* that the people of the said State, through their Legislature or otherwise, *shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned*; and that they shall never levy any tax or assessment of any description whatsoever upon the public domain of the United States, &c. &c.

When the bill was originally introduced into the Senate from the Committee on Territories, it was without such a provision. The experienced Senator from Alabama (Mr. KING) promptly noticed the omission, and strongly pressed upon the Senate the necessity there was of securing the public domain through a conventional ordinance from California, relinquishing all claim or title thereto prior to receiving her into the Union; without which, as he most ably contended, the whole of that domain would escheat to the State, and be wholly lost to the United States. The Senator from Kentucky (Mr. CLAY) expressed his decided concurrence in these views—urged upon the chairman of the committee, (Mr. DOUGLAS,) the necessity of providing against such a consequence; and I understood the distinguished Senator from Missouri, (Mr. BENTON,) the next day, as fully assenting that some such provision would be necessary to protect the public domain. The section which I have just referred to was the result of these expressions of opinion; and I believe that I express the opinion of the whole Senate in saying that, unless some effective provision is made to avert the consequence, the public domain will escheat to California the moment we part with the sovereignty and jurisdiction over it. All the writers on public law, the ablest jurists of ancient and modern times, agree that sovereignty is necessarily and inseparably connected with the right of soil to the territory over which it is exercised. So essential is this right that sovereignty cannot exist without it. (Vattel, 165, 112, 99.) Nor is it surprising at all that such should be the unanimous opinion of the Senate, since it seems to have been the unanimous opinion of both houses of Congress, in every Congress, for these forty years past, which has provided for the admission of new States into the Union, with an unappropriated public domain within their borders; for they have invariably exacted of these States such a relinquishment, and (with a single exception, I believe) made the execution of the ordinances of relinquishment a *condition precedent* to the admission of any new State. I do not regard the five States formed out of the Northwestern Territory as exceptions to the rule; for these precedent conditions rested upon them before they were States, by virtue of the ordinance of 1787; and every one of them, by special references in their several Constitu-



tions, expressly recognized the existing and binding validity of its provisions. That ordinance declared that

The following articles shall be considered as *articles of compact* between the original States and the people and States in the said Territory, and forever remain *unalterable, unless by common consent*.

And the fourth article of that ordinance or compact provided that—

*“The Legislatures of these districts or new States shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulation Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on land the property of the United States,” &c.*

Thus, too, it is seen that the Congress of the Confederation, before the adoption of the Federal Constitution, considered that a title to the public domain within the limits of a State was an incident and muniment of its sovereignty, and that the only mode of protecting it from such a destination was by putting in operation an ordinance of relinquishment *before she became a State*. *A fortiori*, then, when the Constitution took effect, with a clause expressly limiting the power of this Government to hold lands within the body of a State to the enumerated objects of “forts, arsenals, magazines, dock-yards, and other needful buildings”—nor even these without the consent of the Legislatures of the States in which they are situated—most clearly would the public lands have inured to the States where they were situated the very moment they were admitted into the Union, unless they had previously relinquished them, through the same organic power which formed their constitutions. I do not say that the State’s relinquishment of title re-invested it in this Government, or that a State can confer on it powers which the Constitution withholds. Not at all. But I do maintain that the State thereby divests *herself* of it, deprives herself of all interest or motive to meddle with it, and leaves the United States free to dispose of the public lands as heretofore, conveying indefeasible titles to purchasers, because none can have better ones to divest them.

Now, if I may take it for granted that the Congress of the Confederation, the sages of the Constitution, and all preceding Congresses—that distinguished Senators here now—nay, that the whole Senate—think that when a State enters into the Union she thereby divests the United States of their title to the public domain within her limits, unless she *previously*, or *eo instante* with her admission, relinquishes all title or claim to the same, it is most important to the issue I am now approaching to determine the precise point of time at which such an effect of State sovereignty upon the public domain is wrought; in other words, the exact moment when this Government becomes divested of, and disqualified to hold the public domain, and a new State acquires it. But, though this is most important, it is, I apprehend, so entirely clear that none will deem it either debatable or doubtful. There cannot be two opinions about it. There is not a Senator here who will not concur with me that the United States will lose and California will acquire the public domain (if lost or acquired at all) at that precise moment when California shall be received as a sovereign State into the Union, supposing the bill to pass as it is. And as to what will be that precise moment, we must all equally agree about it. It must necessarily be that precise moment when the President shall affix his signature to the same. At that in-

stant every foot of the public domain within her limits is hers! At that instant her sovereignty and rights are as absolute and entire as those of any one of the original States of the Union! There can be no possible mistake about this. Look at the 1st section of the committee's bill. Here it is:

"Sec. 1. *Be it enacted, &c.* That the State of California *be*, and she is *hereby*, admitted into the Union upon an *equal footing* with the *original States*, in all respects whatsoever," &c.

When the President's signature shall have made that section the law of the land, California will have acquired all the freedom and independence, all the rights, immunities, and exemptions, "in all respects whatsoever," which the *original* State of Massachusetts ever has enjoyed, enjoys now, or can enjoy. Did Massachusetts or any of the original States enter the Union clogged with any other condition whatever than that of fulfilling such obligations as the Constitution expressly defined, and imposed upon each and all of them alike? Was any one of them clogged with the condition that she should permit the Federal Government, at its own option, and for all time, to hold any quantity of public domain within her limits—with powers to exempt them from taxes, lease them in perpetuity, establish federal tenancies there, or for any other purposes than those enumerated in the Constitution, to wit: "forts, arsenals, magazines, dock-yards, and other needful buildings?" There is not a Senator here who will not put his emphatic negative upon such an assumption. There is not a Senator here who will not fully concede that when we shall have clogged California with such a condition, she will not be "admitted into the Union upon an *equal footing* with the original States, in all respects whatsoever." There is not a Senator here who will not admit that this first section will speak forth an absolute untruth, unless California shall be admitted discharged of all conditions whatsoever. You must either purge the bill of the condition in the third section which destroys her *equality* with her co-States, or you must strike out the first section, which that condition, if valid, makes utterly untrue. But when you have stricken out that section, the matter will by no means be mended; for, whether you express it in words or not, you cannot admit California into the Union at all, *under the Constitution*, unless she is admitted upon "an *equal footing* with the original States, in all respects whatsoever." If, then, you admit her at all, she will come in discharged and untrammelled of unconstitutional conditions, in spite of you, and whether you will it or not. Time will show that this is inevitable.

But, apart from all this, is it not perceived that there is something surpassingly absurd in insisting upon the enforcement of a condition which we ourselves have made impossible of performance, and a mere nullity, by passing the first section of the bill? That section admits her into the Union at once. If it does, it brings with her a constitutional right to possess, enjoy, and hold forever all the public domain within her limits—and does more: for, at one and the same instant, it divests this Government of the same, and invests California with both the actual possession and the allodial title! These premises being true, what follows: Why, clearly, that you will have already effected and completed "the *primary disposal* of all the public lands within her limits." You will have parted with every acre of it. It is no longer



*yours*; it is absolutely *hers*. Can any thing, then, be more preposterous or impracticable than for you to forbid a sovereign State (as you attempt to do in the 3d section) "from interfering with the *primary disposal*" of what is confessedly her own, and which you yourselves have absolutely disposed of already? You destroy the condition in the very instant that you impose it; for you yourselves effect that very *primary disposal* of the lands before she is aware of your attempt to guard against her interfering with it!

But, sir, how is this a condition at all. A condition binds nobody, unless it is assented to, nor until it is assented to by the party on whom its performance devolves. In all grants, compacts, &c., there must be more than *one* party—a party who accepts, as well as a party who bestows. It is a perversion of language to call that a condition to which but *one* party is privy. It is a *proposition*, and nothing more, binding AFTER acceptance, but without effect *before*. Is there a Senator here who can persuade himself that California can be bound by any proposal you make to her, not only before she has accepted it, but before she has ever heard of it? If you admit her to-day, not less than six weeks must elapse before she can give her assent to it, or even know of it. And what happens in the mean time? Why, she is a State in the Union; and there having been no prior or coexisting relinquishment on her part to avert such a consequence, the public domain has become hers, and she is free to do with it as she pleases. You will receive her Senators upon this floor; her Representatives will be received upon the floor of the House; they will share in all the legislation of the country, and in all respects have the same powers, rights, privileges, and immunities that we have. When California knows of your proposal to her in the 3d section, she will know of all this; she will know that the lands are all hers, and that it is her option to do with them as she thinks fit. *She* cannot believe otherwise; how can *we*? She may relinquish her claim if she will; but what if she will not? If any obligation rested upon her to make the relinquishment, how could it be enforced? You make it the condition of her admission into the Union; and if that condition is not performed, how can you change either the fact or the law of her being a State in the Union, and how is she to get out of it, if you should deny her so obvious and essential a right of sovereignty as that of peacefully seceding from this confederation of sovereignties? You will not admit that she could get out of the Union by her own act, and the whole Senate will deny the power of any or all of the departments to put her out against her consent. The public lands must, then, be saved by the judiciary, if saved at all. But how could it be done there, where law is the true and sole measure of right? How can you make the primary disposal of the domain yourselves, and then complain to a court of justice that California had interfered with your doing so, in the face of the physical impossibility that she had purposely broken a condition she had never heard of, and in the face of so controlling a fact as that you had disposed of it yourselves, before she knew that a promise was expected from her that she never would interfere with the primary disposal of it? How could it be expected that the Supreme Court would enforce a condition against a party which the party imposing it had annulled before the other party had come to a knowledge of its existence? How could it be expected



that it would reverse the judgments of more than thirty Congresses of the Union, that the admission of a State gave her the public domain within her borders, unless it were protected by her prior ordinance of relinquishment? And, above all, how could it be expected that that court would adjudge the United States to be the sovereign owners of public domain within the limits of a State, in defiance of the Constitution, which limits their power to hold them there to the enumerated objects of "forts, magazines," &c.?

But, even could we admit that the primary disposal by the United States of the public domain might not be cotemporaneous with the entrance of California into the Union, this 3d section would not rid us of the main obstacle in our way. It does not provide for any ordinance to be made by the State relinquishing all *claim or title* to the public domain. It contains nothing of the sort. Should such a title accrue to California, as all seem to admit, it is plain that there is not contained either in the section itself, or which it directs or contemplates to be done hereafter, any provision whatever which does or would *extinguish* that title. Giving it the largest latitude, and admitting it could avert consequences which must have ensued weeks, if not months, before it can come to the knowledge of the party it aims to bind, yet the most it could secure to the United States would be the forbearance on the part of California to interfere with "their *primary* disposal." But if we leave California with the constructive possession and actual title to the lands, what is there in the section which forbids her to interfere with them *thereafter*?

A similar section was contained in the act of Congress of June 15, 1836, admitting Arkansas into the Union. But, for the reasons which I have assigned, and for many others, it produced no legal effect whatsoever. And, what is more to the purpose, the very Congress which passed the act was so convinced of its inefficiency to protect the public domain, that immediately it entertained, and the eighth day thereafter, (June 23, 1836,) and long before Arkansas had knowledge of the first act, passed another act, offering large donations of land to Arkansas to induce her to pass an ordinance providing that the authorities of that State should "never interfere with the primary disposal of the soil," &c. I believe these terms were accepted, and the ordinance passed; but whether it was or not, the offer itself is conclusive of two things: the one, that, in the deliberate judgment of the same Congress which admitted Arkansas into the Union, *without such an ordinance*—Arkansas would not have parted with her right of *interference*, notwithstanding that the eighth section of the act admitting her, like the third section of this bill, specially declared that "the State of Arkansas is admitted into the Union upon the *express condition* that the people of the said State shall never interfere," &c.; and the other, that, in the deliberate judgment of the same Congress, Arkansas possessed the *option* to pass such an ordinance or not to pass it, to interfere or not to interfere with the primary disposal of the public domain, and that the eighth section which I have just quoted wrought no control whatsoever over her discretion, rights, or powers in these regards. And it needs no prophet to foretell that neither this Congress, nor California, nor the people of this Union, nor their judiciary, will ever attribute a higher or different effect to the third section of this bill than the Congress of 1836 attributed to the eighth section of the act admitting Arkansas into the Union.

Upon this branch of the subject I conclude confidently, and without the fear of refutation, and scarcely of denial, that if the admission of California into the Union, without any provision at all in reference to the public lands, would insure their entire loss to the United States, the provisions of the third section constitute no bar or obstacle whatever to avert from the Union so serious a consequence. I go further, and boldly defy the wit of man, the very genius of statesmanship, the sagacity of both Houses, to contrive a condition in this bill which can save these public lands to the United States, if California is to be admitted *now*, and if such a condition is only to be known to her and its performance provided for *hereafter* ! In other words, her ordinance of relinquishment must precede her entrance into the Union, or the public domain within her limits will be forever lost to the United States, unless she voluntarily surrenders it. I repeat that every acre of the public domain, that every ounce of the precious metals, will be irretrievably lost to the United States, if she is admitted into the Union under the provisions of any bill which can be devised, unless her ordinance of relinquishment *precedes*, in point of time, the final consummation of the act. After the profoundest reflection I am capable of bestowing upon this deeply momentous measure, such is the thorough and absolute conviction resting upon my mind of what will be the deplorable and inevitable consequences of passing this bill ! With such results before me, can it be expected that I would give it my support ? Have I any instructions from my constituents, under which I could defend myself for surrendering to a single State, and without the semblance of a consideration, a fee-simple title to public domain ample enough in dimensions to cover the whole area of New England, with that of the Empire State of New York added to it, and embracing a mineral region with a depth of unexplored treasures ample enough to discharge the public debt of the world ? Sir, is there a single constituency on this side of the Rocky Mountains who are anticipating such startling and blasting results from this bill, or who would assent to it if they did, or who would submit to it if they could help it ? Should I vote for this bill, and should the bill pass, and should these consequences ensue, I would not dare to face my constituents, after sharing in an act of fatuity that would avert from them and their posterity these exhaustless sources of relief from all the fiscal burdens of the government, and for all time ! Not a Senator here represents a constituency more considerate, liberal, or generous than mine ; but there are things which they could neither endure, nor forget, nor forgive, and these are of them.

I am aware, sir, that to all this it may be replied that, even admitting that my objections to the third section should be deemed conclusive and unanswerable, yet that all of them have been anticipated and provided against by California herself, and through an instrument contemporaneous and of equal authority with her constitution itself ; and as it professes to provide for the relinquishment on her part of all purpose to "interfere with the primary disposal" of the public domain, and was executed *before* she applied for admission into the Union, it overcomes the main obstacle I have raised to her admission under this bill. This I should concede fully, provided that such instrument does effectually protect the public domain from all danger. Let us, then, look at that



paper. It has been printed by order of the Senate, and I have it here. It purports to be "California's ordinance of relinquishment," &c.

There is a mystery about this paper, and its introduction into the Senate, which I have striven in vain to comprehend. The preamble to it attests its adoption by the California Convention, declaring—

Be it ordained by the Convention assembled to form a constitution for the State of California, on behalf and by authority of the people of the said State, &c.

Now, all such ordinances are invariably, I learn, attested by the signature of the president of the Convention, countersigned by the secretaries, and transmitted with the constitution, to be laid before Congress contemporaneously with it. All this was done in the case of the Michigan ordinance; and the California ordinance is said to have been modelled upon that. But, more strangely still, it did not accompany the California constitution, when it was transmitted by the President to both Houses of Congress; and for no other reason, I take it for granted, but that the President had not received it. Stranger still, the constitution was fully two months before Congress: it had been referred to the Committee on Territories, and that committee had reported a bill to admit California into the Union, and not an intimation was given to the Senate that such an ordinance existed. Though it is evident that the California Convention considered the admission of the State somewhat depended on the efficacy of that instrument, not until a writer of deep and acute sagacity, of profound judgment, and of consummate forecast, (*Randolph of Roanoke*,) had, in the public prints, strongly called the attention of Congress to the necessity there was of exacting such an ordinance prior to the admission of California into the Union, to save the public domain from passing to the State, pointing out the usages which had obtained in the admission of new States heretofore, and whose remarks were soon followed up in the Senate with the striking and forcible observations to the same effect from the Senator from Alabama, (Mr. KING,) and from other distinguished Senators, did the Senate come to a knowledge that any such ordinance had been made. Shortly afterwards, the chairman of the Committee on Territories (Mr. DOUGLAS) laid upon the table of the Senate a manuscript paper, (of which the paper before me is a printed copy,) and obtained the Senate's order for printing it. But this paper did not purport to be an *original*. It was neither *dated*, nor *signed*, nor *countersigned*; it was not *certified* to be a *copy* of any valid instrument then in existence. In fine, it had not one proof or trace about it to attest either its authenticity or verity, or that California would be bound by it, should Congress treat it as genuine and valid! Is it not most extraordinary, sir, that we should be permitted to know so very little about a document so important as this, and where such vast interests are at stake? Congress has a right to be informed whether there has been an original ordinance passed and attested in proper form. If there be, where is it? Who brought it to Washington? Who sent it? Who withholds it? Why was it not transmitted to the President with the constitution, and by him to Congress? Sir, we are reasoning in the dark entirely, until we have some assurance about this matter. Is there any Senator here who will vouch the authenticity of the ordinance which I hold in my hand? Will the honorable Senator from Illinois, (Mr. DOUGLAS,) who introduced it into the



Senate, and moved the Senate's order for its printing? I will ask of the Secretary to hand me the *original*, on file with the papers of the Senate.

The VICE PRESIDENT. The Chair is informed that the paper alluded to is in the Secretary's office, and it will presently be brought into the Senate.

Mr. SOULE. While the Secretary is looking for the document, I had better, perhaps, go on with a synopsis of what the printed ordinance provides. It presents the following results:

Article 1st binds this Government to give California four sections in each township in the State for the use of schools.

Article 2d binds the Government to give to California seventy-two sections for the use of a university.

Article 3d binds this Government to give four sections, to be selected *by the State*, for the use of a seat of government.

Article 4th binds this Government to give 1,000,000 of acres, designated *under the direction of the Legislature*, for the purpose of defraying the expenses of the State Government, and for other State purposes; also, 5 per cent. of the net proceeds of the sales of the public lands in the State for the encouragement of learning.

Article 5th binds this Government to give all the salt springs within the State, and all the land reserved for the use of the same.

Let us pause here a moment before noticing the 6th article. It is perceived that, while these five sections bind this Government to make to California all these grants of lands, far exceeding any grant that was ever made to any other new State, not one of them binds California to any thing! Now, without valuing at all (for want of data) the amount arising from the 5 per cent. on the net proceeds, here is a grant of 1,737,280 acres of land, with an absolute authority *to the Legislature of California* to make her own selection of 1,006,560 of the same from any portions of the public domain! How and where these lands would be located by the State, it needs no seer to foretell; and while a very large proportion of the choicest agricultural lands would fall to the State's share, every foot of the gold regions would at once be covered and secured to California, to the perpetual exclusion of the United States and of every State.

Now, I take it for granted that there is not one man in either House of Congress who would sanction by his vote an acceptance of these propositions as they stand in the ordinance. But does not the ordinance confer some authority by which these propositions may be modified so as to secure the acceptance of Congress? No, sir; none whatever! The California Convention has foreclosed and shut out from the action of Congress all modifications of either of them. They are to be accepted or rejected *in toto*, and of course their rejection avoids the whole ordinance. This is obvious from the 6th and last article of the ordinance, which I will proceed to read to the Senate:

ART. 6. The first Senators and Representatives elected to Congress from this State are hereby authorized and empowered to make or assent to such other propositions as the interest of the State may require; and any such changes or new propositions, when approved by the Legislature, shall be as obligatory as if the assent of this Convention was given thereto. And all stipulations entered into by the Legislature, *in pursuance of the authority herein conferred*, shall be considered articles of compact between the United States and this State; and the Legislature is hereby further authorized to declare, in behalf of the people of California, if such declaration be proposed by Congress, that they will not interfere with the primary disposal, under the authority of the United States, of the vacant lands within the limits of the State.

It is plain, then, that this section has conferred no authority whatever upon California's Senators and Representatives to make or assent to *any variations* in the propositions contained in the first five sections of the bill, and expressly limits their agency to *other* propositions which they might make or assent to; and hence the acceptance of this ordinance by Congress would not only insure the loss to the people of the other States and the treasury of the Union of the choicest farming lands of the State, but the entire mining region of that county! But there are other strange matters about this ordinance:

It is strange, as the ordinance is said to have been modelled upon that of Michigan, (and it is manifest it was,) that the very clause should have been left out of it which, in the Michigan ordinance, conferred the power to vary the propositions made by that State; for that ordinance provided that "the senators, &c., are authorized and empowered to make or assent to such *other* propositions, or to *such variations* of the *propositions herein made*," &c.

It is strange, that this ordinance should have been modelled upon that of Michigan, as it must have been known that that of Michigan was *rejected by Congress, even with the foregoing conservative clause contained in it.*

It is strange, that while the ordinance as printed by the Senate omits the clause conferring authority "*to vary the propositions herein made*," the ordinance as found in the printed debates of the California Convention, which I have before me, retains that clause in the words of the Michigan ordinance, but omits the clause touching the power "to make or assent to *other* propositions.

Mr. DOUGLAS. If the Senator from Louisiana attaches any importance to that fact, I will give an explanation of it. I knew nothing of this ordinance till one of the Senators from California called on me and stated that there was an ordinance. I asked why he had not presented it? He answered that the construction they put upon it was, that it was simply for them to make these terms after the State was admitted. I told him I thought it would be well if it was before the Senate, and asked him for a copy. He got a copy, and brought that paper; and, after consultation with the Senator from Kentucky, (Mr. CLAY,) I moved to have it printed. That Senator says he obtained it from the official reporter of the debates of the California Convention. If there is any error, it is an error of the reporter in copying.

Mr. SOULE. I hope the Senator from Illinois will not understand me as casting the least suspicion upon the gentleman who handed him this ordinance; I know him well; and he is the very last person whom I would suspect of an act in the remotest degree improper or unbecoming. I am sure he has acted in good faith; but this does not remove the difficulty which arises from the inconsistency between the ordinance as printed for the Senate and the ordinance as printed in the book of debates. I was discussing a mere matter of fact, without any reference to individuals connected with it, officially or otherwise. The Senator, I see, has discovered that inconsistency to which I was alluding; and, from what has just fallen from his lips, we are left with no means of ascertaining which be the valid ordinance. The ordinance itself must have been regarded by the honorable Senator as being of some importance, as we find that, after having reported a bill from the Commit-



tee on Territories, he afterwards amends that bill by inserting the clause which I have referred to, and makes specific reserves for the ordinance.

Mr. DOUGLAS. It is true, as the Senator has stated, that the bill as reported contained no clause in regard to the public domain, for the reason that the committee did not then deem such a clause necessary. It will be recollected, at the time that objection was first made to the bill on that account, I offered to prove, by the most indisputable authority, that no such clause was necessary. Subsequently, after the suggestions were made by the Senator from Alabama and others, I stated that I would sooner write down than argue down the objection. Hence I brought in the bill as it is. At the same time one of the Senators from California told me that, at the time the people of California adopted the Constitution, they did adopt the ordinance. I asked him why he did not send it in. He answered that it was a matter for negotiation, after the admission of California as a State. I asked him if he had an authentic copy of the ordinance. He said he had not; but he had a copy, which he gave to me. I presented the paper with the explanation at the time the objection was first made. But I would remark to the Senator from Louisiana, that the action of the Committee on Territories was not upon that document; nor was the action of the Committee of Thirteen upon that subject. The bill must stand or fall upon its own terms, and not upon that ordinance. I am prepared to maintain that, according to well-settled principles of this Government—principles that have been settled over and over again, which the Senator has overlooked—even that clause was not necessary in the bill of the Committee of Thirteen.

Mr. SOULE. I expected that the honorable Senator arose to explain these inconsistencies, and I was listening to him with great attention; but he has not relieved my mind, nor has he, I apprehend, relieved the mind of other Senators, from the anxiety which such a state of things as the one before us must necessarily have created. In answer to an inquiry which I put to him a while ago concerning this ordinance, and asking if the honorable Senator would vouch for its authenticity, he says that the Committee on Territories never acted on the ordinance. Have I intimated anything of the kind? By no means, sir? In the course of my remarks upon the matters connected with the admission of California, finding in my way this very ordinance, I was merely commenting upon the strange appearance it bore, and upon the incongruity of the written document when compared with the printed one; and the honorable Senator thinks, it would seem, that he has sufficiently answered me by stating that it was not acted upon by the committee!

Mr. DOUGLAS. With a slight change of expression, the Senator and myself shall find no difficulty in agreeing. He wants us to give it up. I will say to the Senator, we never urged it, and therefore we cannot give it up. It is he who brings up the ordinance as defeating the bill, and not we. We rely on the bill as it is.

Mr. SOULE. The honorable Senator, I am sure, has not read lately the bill under debate; otherwise, he could not take it amiss that I refer to this ordinance. Will he allow me to refresh his memory by reading to him that part of the third section of *his own bill*, which reads as follows?

Nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the Constitution of that State.



Mr. DOUGLAS. Precisely. I wrote that clause, and my idea was this: that as the matter of the ordinance for setting apart school land and seminary land would arise immediately after California was admitted into the Union, we declared in that part of the bill that nothing should be construed as rejecting or affirming, thus leaving that open an question.

Mr. SOULE. The Senator must feel somewhat inclined to exonerate me from reproach for having thus commented upon an ordinance which he himself had brought into debate, through the reference he made to it in his own bill. But I despair not to satisfy him before I am done that, even for the object which he seems to have had in view, the ordinance in its present shape would not avail him.

I was going to remark, when I was interrupted, that it was strange that while the whole virtue of this ordinance consists in the power it purports to confer upon California's Senators and Representatives to make a compact with Congress touching *other propositions*—such as a reduction of boundaries, relinquishment of title to the public domain, &c., &c.—yet we are, day by day, pressing this bill to a final vote, and not the first movement has been made in the Senate, by friends or foes, evincing either a purpose or a desire to enter into a compact with these gentlemen to secure to the United States either of these very important objects, or any others.

Sir, I would gladly have taken the initiative in such a movement, for the accomplishment of objects so important to the interest of the whole country, could I have persuaded myself that the powers invested in California's agents by this ordinance were adequate to bind California definitely in such a compact; and I proceed to give the reasons why, in my most deliberate judgment, they were not:

1st. The ordinance devolved upon them functions which constituted them as officers by constitutional intendment, and it may be doubted whether they were eligible to appointments to such high trusts under the Constitution of either California or the United States: certainly they could exercise no other powers, as Senators and Representatives, but those which the Constitution of the latter specially devolved upon them.

2d. The ordinance conferring these powers was passed by a convention invested fully with the whole organic sovereignty of the people of California. Could it, or any of its provisions, be abrogated or modified by any authority less than that which made it? Could the convention have conferred upon others conventional powers? Did it do so? *Delegata potestas non potest delegari!* Why, one of the provisions which a compact entered into by the United States with California's agents might embrace would probably be a reduction of boundaries: a change in them would change the constitution of California.

3d. The convention was constituted for a special purpose—to form a constitution and State government. That being done, its functions were at an end, and it did accordingly adjourn *sine die* on the 13th of October, 1849: from that date it was *functus officio*. Could its powers or functions have survived the adjournment? Not for an hour! Could it delegate those powers and functions to others, so that they could outlive its own political demise and civil death? Most obviously, no.

4th. Certainly that Convention, of itself, could not have performed any act of sovereignty, or any political act whatever, after its final adjournment, and when it had been dissolved into its original elements:

*a fortiori*, then, it could not have delegated to California's Senators and Representatives *conventional* powers, to be exercised after the Convention had ceased to possess any powers at all; nor could it have devolved *conventional* powers upon the *Legislature* to perform acts of sovereignty which were never conferred upon it by the Constitution. Least of all could the Convention delegate its *conventional* powers, or any portion of them, to its agents, to be exercised at *Washington*; for, if it could, it might delegate the like powers to other agents, to be exercised in *California*. And when you once adopt such a system of substitution, the monstrous absurdity soon grows into the principle that when the people have chosen delegates to a convention, those delegates can appoint others in their places, and, indeed, decline themselves acting at all, and thus leave the people subjected to a system of government imposed upon them by men in whose appointment they had no share.

5th. Admitting that the Convention could have delegated such powers, those which she has actually conferred upon her agents are wholly inadequate to the service for which they purport to have been bestowed. While these mandatories are forbidden to modify the first five sections at all, and while it authorizes and empowers them to *entertain* "other propositions," it *commands* them to nothing. They cannot bind California definitely to any thing beyond an acceptance of the unexampled grants and donations which the first five articles of the ordinance so lavishly bestow upon them! All that they do is inchoate, contingent, and in abeyance until *approved by the Legislature* of California, while all that Congress stipulates is to pass into instantaneous enactment and execution.

6th. The ordinance confers conventional powers upon the California Legislature, which the California constitution scrupulously and entirely withholds.

7th. But the most important and vital defect of the sixth section is yet to be noticed; and I now specially call the attention of Senators to the language in which it is couched. It declares that—

The *Legislature* is hereby further *authorized to declare*, in behalf of the people of California, if such declaration be proposed by Congress, that they *will not interfere with the primary disposal*, under the authority of the United States, of the *vacant lands* within the limits of the State.

Now, let us point out, one by one, the absolute inefficacy of this provision to secure the deep interest of the Union in the vast and unexplored domain embraced within the limits of California.

It excludes California's Senators and Representatives from all agency in making provision for the protection of the public domain: It devolves all the power it confers on the *California Legislature exclusively*, and limits its action to mere *words*, which accomplish nothing, because they bind nobody. It excludes whatever it authorizes the Legislature to do, from the obligation of the compact it suggests between the United States and the State of California. It commands the Legislature in nothing, but merely authorizes it to do *something* in reference to the public domain, and of course leaves to the Legislature a full and untrammelled discretion to do that *something* or to let it alone. What it authorizes the Legislature to declare is a mere opinion, which may vary as Legislatures may change, and will be of equal effect whether favorable or contrary to that which it is intended should be covered by its



sanction. But when you have made the most of this legislative declaration, that declaration does not cover an inch of the public domain in California which is already *occupied*! Look at the closing clause of the sixth section of the ordinance: it limits the legislative declaration to the *vacant* lands. Well, with 20,000 agriculturists locating farms, and 100,000 gold-diggers in quest of fortunes in California, how much think you, Mr. President, there is at this day vacant of the choicest and most valuable agricultural and mineral lands of that State?

If this ordinance is to be all our reliance to save the public domain from escheating to the State, it is idle to talk of the people of California not interfering with the primary disposal of it, when the United States will have already effected that primary disposal by admitting California into the Union.

Besides, what know you of the condition of the public domain in California? What know you of the mines? You are in the dark about all this; and yet you are going to surrender your sovereignty over regions unexplored, unstudied, unknown; you divest yourselves of your sovereignty before having ascertained its value, its bearing, its extent; you leave every thing to chance, to future debate and interpretation, shrouded in difficulty and darkness.

And now, should the principle so often and so strenuously advocated here and elsewhere by your government agents in California, by your ministers here—should that principle prevail which makes the law of Mexico paramount over the Territories ceded by the treaty of Guadalupe Hidalgo—what becomes of the vast treasures, the uncounted millions, imbedded in the mining repositories there? The Mexican law opens the mines to all the world, and constitutes the first occupant *owner* of the mine he discovers or works, reserving only to the sovereign the right of levying a duty on the proceeds of the diggings.

By the civil law, all veins and mineral deposits of gold or silver ore belonged, if in public ground, to the sovereign; if in private ground, to the owner—subject, when worked, to a tribute of one-tenth of the produce. Subsequently, it became an established custom, and was so declared by law in most kingdoms, that *ALL such veins* vested in the *Crown*. In Spain, under the laws of the PARTIDAS, the property was held to be so vested in the King that it did not pass with the grant of lands. Afterwards, by a law of Alfonso XI, in the ORDENAMIENTO REAL, all mines were declared to be the property of the Crown, and no one was permitted to work them except under some special license. Juan the First moderated this law, by permitting any person to dig or work mines in his land, or in the land of another with his permission, and to retain one third of the produce, rendering the other two-thirds to the Crown. But Philip II repealed all this legislation, and, by an ordinance to be found in the New Code of laws of Castile respecting the mines, provided that—

In order to benefit and favor our subjects and the natives of these kingdoms, and all other persons whatsoever, though strangers to these kingdoms, who shall work or discover any silver mines whatsoever, discovered or to be discovered; it is our will and command that they shall have them, and that they shall be their own in possession and property, *and that they may deal with them as with anything of their own*, observing, both in regard to what they have to pay us by way of duty, and in all other respects, the regulations and arrangements ordered by this edict, in the manner hereinafter mentioned.—(Gamboa on the Mining Ordinances of Spain.)



The laws of the Indies make a similar grant "to all subjects, whether Indians or Spaniards, and of whatever station, condition, rank, or dignity, (except governors, ministers, alcades, &c.,) authorizing them to work the mines freely and without impediment, and making them *common to all persons*, wheresoever situate, &c.,) *Leyes de Indias*, title 19, book 4.

From the ample terms of these grants, it is evident that the sovereign divested himself through them of all right of domain over the mining repositories within the possessions which Spain then held in the New World; and such is the decided opinion of *Don Matheo de Lagunes*, judge of the audiency of *Quito*, and of the *Cardinal de Luca*, two eminent jurists of great authority and learning, whose works have cast an effulgent light over these matters, and have rendered them accessible to the bluntest understanding. Now, let me ask honorable Senators, how, under such a legislation, stands the public domain within the borders of California?

Without concluding, Mr. S. here gave way to a motion to postpone the subject until to-morrow.

TUESDAY, JUNE 25, 1850.

Mr. SOULE resumed and concluded as follows:

MR. PRESIDENT: When, on yesterday, through the indulgence of the Senate, I was permitted to resume my seat, I was commenting upon the legislation of Mexico with respect to the mines. I propose now to resume that subject, and to dispose of it as briefly as it may be in my power to do. But before I proceed in my remarks, I will express my regret that anything which I said on yesterday, with respect to the ordinance enacted by the California Convention, should have been construed as casting the least reproach upon those persons who were in any way connected with the transmission of it to this government. It is with me an object not only of taste, but of scrupulous observance, never to bring names into debate when it can be avoided, and, above all, never to cast the remotest suspicion on any individual when he has not a fair chance of defending himself. I was dealing with facts, and I most sedulously avoided connecting them with any person to whom they bore not an official and undeniable relation. If names were brought forth during the debate, it was not through my agency, but through that of others; and for this I decline all responsibility.

Returning, then, to the question of the mines, the Senate will have perceived that the only right which the United States, as sovereign, and under the stipulations of the treaty of Guadalupe Hidalgo, can set up, and are entitled to set up, and to exercise over the mining regions, is the right reserved by Philip II. when he divested himself of that part of the domain, to wit: the right of levying a duty upon, and of requiring a portion of the proceeds of the diggings; for, nothing can be surer than that these provisions are now, and have been, time out of mind, the settled law in Mexico, as they have been that of all the Spanish American Republics. And as this right is one that belongs essentially to the sovereign, I ask whether, even under any reservation of the *public lands*, the United States could exercise it after transferring their sovereignty to the State of California, without any specific reservation for its protection?

The present gold-diggers will, then, have acquired in the intervening time between the cession to the United States by Mexico of the territory which California embraces within her boundaries, and the time when the clause in this bill extending to them the Constitution and laws of the United States shall go into operation, certain rights—*inchoate* rights, if you please—but rights which should have been disposed of by you in some way or other, while you retain the sovereignty in your hands. What will become of them when your sovereignty has passed away, and you have surrendered the only power that gave you any control over them? It is fit that the Senate should deeply ponder upon the consequences, before hazarding a step which must subject these vast interests to the fate of an irretrievable abandonment.

Having shown on yesterday, (as I think, that the ordinance enacted by the California Convention amounts to nothing,) that the 3d section of the bill under debate affords (nor could through any modifications which could be made in it) no protection whatever for the invaluable public domain of the United States, which will be saved or sacrificed as we shall *decide*; after the most deliberate and anxious reflection, my mind rests under the conviction that it is past the wit of man to devise a plan which will protect this interest from escheating to the State, unless there be a conventional ordinance from California preceding her admission as a sovereign State into the Union. And I think I may satisfy the Senate that California is very much of that opinion, and, what is more ominous still, that she is resolved and intent upon maintaining it the moment the occasion arises to put it to the test. It was under this conviction that I prepared a *substitute* for the three first sections of the bill under debate, which, I think, safely and amply provides not only for all these exigencies, but places Northern and Southern territorial rights upon so fair a basis of public justice and constitutional equality, that its adoption would at once secure not only the peace, but the fraternal harmony of the Union. If there be any plan different from this, in any of its essential features, adequate to the objects we all profess to have in view, I confess I have no reach of mind of power or vigor enough to compass or to grasp it. Be assured, sir, that if it shall be the pleasure of Congress to pass this bill in its present form, we shall have parted with the last opportunity and the only means of securing any one of the great interests at stake; and the only chance that will be left us, if there be a chance—the only hope that remains, if there be a hope—is, that California will voluntarily surrender and relinquish her title to that which the provisions of this bill will make indisputably her own. We may form some estimate of the importance and value of such chances and hopes in turning to a few startling passages which struck my attention while glancing through the volume of debates of the California Convention.—(See Debates, p. 316.)

Mr. McCarver submitted the following resolutions:

*Resolved*, (as the deliberate opinion of this Convention,) That the public domain within the limits of this State in right and justice belongs to the people of California, and the undisturbed enjoyment thereof ought to be secured to them.

*Resolved*, That the Legislature of this State, at its first session, be requested to take such steps as it may deem necessary to carry out the object of the foregoing resolution.

Mr. McCarver said: I conceive the object of these resolutions to be of vital importance to the citizens of California, and hope the House will generally unite with me, at least so far as to take the matter into serious consideration. These resolutions refer to the right of the new States



to the public domain within their limits. The question has been before the American people, and has been advocated by the people of the West especially for many years; and the right of the new States to the public domain within their borders has been generally conceded through the United States.

Mr. Botts, following, said: I shall vote against the resolution, &c. As to the principle avowed by the gentleman from Sacramento (Mr. McCarver) that the public lands necessarily belong to the State, I am willing to acknowledge it; but I shall vote against the action of this Convention upon that subject, simply because I think it is a proper object of legislative action. \* \* \* That ground I am ready to take; but I will take it at the polls. \* \* \* I do not object to the principle avowed in the resolutions, &c., but to any action of this House upon the subject.

Now, will the Senate follow me to page 349 of the same volume?

Mr. Stewart, of San Francisco, in alluding to what Mr. Gwin had stated before in these words: "we have the privilege, whenever we become a State, of taking 500,000 acres of land. As a matter of course, we will select the best from the gold mines," &c., says:

I concur entirely with my colleague from San Francisco (Mr. Gwin) in regard to the 500,000 acres of land granted by Congress for the purposes of education.

It is (says Mr. Sherwood in the same page) on the supposition that the 500,000 acres, or a portion of them, may be located in the mining districts, and that from those lands a large revenue may be derived, which properly should go to defray the expenses of the government, that I think this proviso should stand.

By turning to page 471, the Senate will find the reassertion of that right in the State, first claiming absolutely the public domain exclusively, and then, at all events, of locating the lands, claimed by California as a donation, in the mining regions, without a dissenting opinion, so far as I can find.

Mr. DOUGLAS. Will the Senator from Louisiana allow me to ask him whether he asserted that California had passed a resolution that the lands did belong to the State?

Mr. SOULE. Not at all. I meant to state, on the contrary, that the resolutions were resisted upon the ground only that it was not a matter for the action of the Convention, but for that of the Legislature, who undoubtedly would exert it. Yet the resolution was referred to the Committee of the Whole without a dissenting voice, and only failed to pass, not because of any reluctance on the part of the Convention to admit the principle which they proclaimed, (for it was generally assented to,) but because of there being *no occasion* for the Convention to act upon them.

And, Mr. President, the keen eye of the Senator from Illinois cannot have failed to perceive in the fact, that the California constitution had to be subjected to the scrutinies of both Houses of Congress, a very adequate reason why the members of the Convention should have forbore to assert in it an absolute claim of title to the public domain within the State, as that must have insured the rejection of the constitution, whenever it should be offered for the acceptance of Congress.

Mr. FOOTE. Did I understand the honorable Senator from Louisiana as contending that the Legislature of California had the power to do so?

Mr. SOULE. Most undoubtedly, unless you secure the public domain by an ordinance of relinquishment precedent to, or contemporaneous with, the admission of California into the Union.

But, Mr. President, if you were disposed to admit California without the requirements which I have alluded to, even then would you be willing to admit her with the limits which she claims in her present consti-



tution? I am most reluctant to believe it; and I proceed to state some of the prominent objections I have to the boundaries she claims in it:

They are *enormous and excessive*, far beyond such as were ever allotted to any of the States which were formed out of Territories belonging to the United States. Tennessee was only allowed, in round numbers, 44,000 square miles; Ohio, 40,000; Louisiana, 46,000; Indiana, 34,000; Missouri, 67,000; Illinois, 55,000; Alabama, 50,000; Maine, 35,000; Mississippi, 47,000; Arkansas, 52,000; Michigan, 56,000; Florida, 59,000; Iowa, 50,000; and Wisconsin, 54,000.

They are *unnatural*, disregarding those geographical divisions which her very structure indicates, and combining together districts disjoined by the eternal barriers of the Creation, and by antagonistical conditions of soil and climate.

They are *impolitic*, placing under the control and sway of a single State territory equal in extent to all New England, with the Empire State of New York added to it; an extent of seacoast exceeding one thousand miles; all the trade of China and of the Indian Archipelago—and laying the foundation for an empire which may hereafter wield in its hands the destinies of this Republic, if it should not endanger its very existence.

But we shall find in the movements that brought about the adjustment of the present boundaries of California, that they by no means originated in any wants of hers, but with the intermeddling of the Administration, and in the arrogant assumption of the authority of Congress to close up the slavery question, through the exclusion of the South from the totality of the Territory, which was the nucleus of the contest at the last two sessions; and that I may give the Senate an insight into the motives which actuated the delegates in the California Convention to assume the boundaries which they claim, I will now lay before it some other passages from the debates of the Convention:

Mr. Semple, (President of the Convention.) I feel under some obligation to repeat a conversation which has a direct bearing upon this matter. There is a distinguished member of Congress, who holds his seat from one of the States of the Union, now in California. With a desire to obtain all the information possible in relation to the state of things on the other side of the mountains, I asked him what was the desire of the people in Congress? I observed to him that it was not the desire of the people of California to take a larger boundary than the Sierra Nevada, and that we would prefer not embracing within our limits this desert waste to the east. His reply was: 'For God's sake, leave us no territory to legislate upon in Congress.' He went on to state then that *the great object in our formation of a State government was to avoid further legislation*; there would be no question as to our admission by adopting this course; and that all subjects of minor importance could afterwards be settled. I think it my duty to impart this information to the Convention. The conversation took place between Mr. Thomas Butler King and myself.—(*Debates*, 184.)

Speaking of this communication, Mr. Shannon says, (*Debates* 191:)

The chief argument which has been urged in favor of the extreme boundary has been, not as to the necessity, not the convenience, not the benefit to be derived from it, nor the necessity of including it, but the probability of its passing the Congress of the United States, and the authority of a gentleman from Congress, that, if such a proposition was adopted, it would pass. Sir, I claim for the dignity of the new State of California, that all dictation of this kind should not receive a very favorable reception in this House; that we should not listen to the propositions of gentlemen in this matter, however high their characters at home, &c. \* \* \* But who are these authorities? Are they men who have become, by long life or service in this country, so deeply interested in the welfare of California that the weal of the new State is alone the dearest object of their aspirations? or are they not rather the agents of interested parties, not of Congress? For they do not speak the will of Congress; a single man cannot speak the will of Congress. And when the President of this Convention stated, this afternoon, the expression of

Mr. Thomas Butler King: 'For God's sake, leave no territory in California to dispute about'—when he (Mr. King) spoke it, I presume he did not speak the sentiment of the entire Congress of the United States. The secret of it is this, that the Cabinet of the United States have found themselves in difficulty upon this question; they are in difficulty about the Wilmot proviso; and Mr. Thomas Butler King (it may be others) is sent here, in the first place, for the purpose of influencing the people of California to establish a State government, and, in the next place, to include the entire Territory. \* \* \* There are two great political parties there, (in Congress,) who have been for years past fighting like tigers in their cage. Every day, every hour, but increases the ferocity with which they struggle upon this question of slavery.

When this proposition comes before them, Southern members—those from the slaveholding States—will see that it strikes from beneath their feet an enormous tract of country into which they desire to introduce slavery hereafter. Add to that the further argument of the enormously extensive territory that it includes; and then add to that the further argument, that a large portion of that territory has not been represented in this body—that the feelings and wishes of the population are not known—and I think you leave open ground enough for them to build an argument upon that will defeat your constitution; that you at least bring all those difficulties which gentlemen hope to avoid directly to bear against it—a result which every gentleman here, I have no doubt, honestly seeks to avoid. These are arguments which you cannot get over. It is true, sir, that the boundary is enormous. No man here wishes to include the whole of it. We are told by these very gentlemen that it is too large; it is unwieldy; it includes an enormous barren tract of country—an immense desert waste; but, say they, *we will bring it all in, not for the purpose of retaining it within the State of California, but for the purpose of settling the slave question at home. We don't intend to keep it.*

Then we have something still more significant from the delegate from San Francisco, (Mr. Gwin,) page 197:

I was opposed to any other boundary but that of California, as recognized by the Government<sup>s</sup> of the United States and Mexico, for another reason, and I consider it a very important one: that if we leave a portion of territory out, we would necessarily open a question which we here should not interfere with. We all know what 36° 30' is. It is the great bone of contention. North of that there is no contest; south of it there is a contest. If gentlemen will look where this line strikes the Pacific, they will see that not a solitary vote was cast by a delegate in this Convention south of that line, except those cast *against a State government*. The representatives here from that region are unanimous in their votes against the establishment of a State government. If we include the territory these delegates represent on the coast, why exclude the barren waste beyond, where no white man lives? *We take away the substance and leave the shadow.* Let us take the whole territory, or stop at that line. If we stop at that line, we mutilate the Convention by excluding the members south of it.

Here we have the secret of this extraordinary assumption, on the part of California, of boundaries extending far beyond her actual and necessary jurisdiction.

True it is, that the boundaries adopted by the Convention fell far short of those advised by Mr. King: nevertheless, the Senate will see that they embrace every inch of ground that is worth having.

As Mr. Gwin says:

Why exclude the barren waste beyond, where no white man lives? *We take away the substance and leave the shadow*

Mr. DOUGLAS. Will the honorable Senator inform us on what page of the report that is to be found?

Mr. SOULE. At page 197. Had the California Convention any right at all to parcel out the country? If yea, why embrace the reluctant opposing districts of Santa Barbara, San Diego, San-Louis Obispo, and Los Angeles? If no, why not call into the Convention Deseret, which numbered some 30,000 or 40,000 inhabitants? Had Deseret joined the southern districts, who can say what would have been the result as to the formation of a State government at all, or as to the slavery question?

Nor does the representation of the several districts in the Convention seem to have been very weighty, as far as numbers in the constituent



body were concerned, if we may judge of it from the fact stated by one of the delegates of one of the most populous and most respectable districts of California, (Mr. Botts, from Monterey):

Do you know (says he, p. 193) by what vote of my constituents I sit upon this floor? I will tell you. I received 96 votes; my colleague received some 20 or 30 more; and as for the remainder of my colleagues, I believe they are even worse off than I am. And yet we are called upon to form laws for 30,000 freemen upon the Salt Lake! For my part, I have not the face to do it.

And thus a district representing fully one-tenth portion of the nominal population of all California, and more than one-fourth of its *resident* population, only cast in the election of delegates something less than 150 votes! What the votes were in the other districts we are uninformed.

Strange opinions appear to have been entertained in the California Convention. Its members had certainly conceived that they were vested with most extraordinary powers, that they should have assumed the high tone which characterizes their language when they speak of their relations with the United States. They were to *receive* propositions from Congress. "Negotiations were to be opened between the *high contracting parties!*" They took it for granted that they were under no constraint to limit their boundaries to their own wants, but might rejoice and assist the free-soilers in their efforts to crush and degrade the South, by excluding her from settling in the ceded Territories, and thus despoil her of her equal share in the common property of the Union:

MR. MCCARVER. It is the duty of the State of California and the United States, as the two high contracting parties, to fix the boundary, &c. \* \* \* It is our duty to refuse to come into the Union, as Iowa did, unless Congress accedes to the boundary which we deem proper to adopt.—(Debates, page 169.)

The secret of all this boldness on the part of the California Convention is to be found at page 179 of the Debates, where Mr. Botts is made to say: "We have got the Congress of the United States in a *tight place.*" \* \* \* "Congress is *bound* to take us—to *admit us, bound and all.*" \* \* \* "I am therefore now inclined to *lay down the dictum to Congress—to prescribe to them even this question of boundary—to make it the sine qua non* of our admission."

Such were the views that operated on many, if not on most, of the delegates composing that convention. The slavery issue was to be taken from Congress, and devolved upon them! California would settle it, and settle it readily, by taking all from the South, and giving it to the North. Why, the North could have done that long ago, had she ventured, and had she dared. She had the power; but, in her praise let me add, she was void of the rashness, and void of the injustice to exert it. But the convention was with plenary powers, and was willing so to exert them that *no territory should be left for Congress to legislate upon.* California might take it easily: for she had Congress in a *tight place*, and ready to surrender at discretion. And when all this is taken into consideration, will any one wonder that California should have appropriated to herself those limits which give her, in the language of Mr. Shannon, (p. 192,) "*a shape most awkward and ungainly.*"

But they had resolved upon taking the *substance* and leaving the *shadow*. Are you, Senators, prepared to receive her into the Union, unshorn of an atom of her monster dimensions?—With 153,000 square



miles of jurisdiction, and with 1,000 miles of coast?—With the command of every outlet through which the vast territory that stretches eastward to the western slope of the Rocky Mountains might disgorge its products and enlarge its trade by a free access to the Pacific? Will you thus disturb the natural demarcations which so peculiarly characterize and divide the different portions of that country—not because it is right in itself, or just to the South, or best for California, but to remove the frantic cravings of a rapacious and intolerant free-soilism?

Sir, Nature has drawn with her own hands the limits which California should have as a State, by uniting in a common centre the valleys of the Sacramento and the San Joaquin. They discharge their main waters into the same basin, and that basin is the only outlet that connects them with the Pacific; and although they may differ somewhat in climate and fertility, yet they were clearly intended to form a single, inseparable whole.

The imposing and almost impassable Sierra Nevada encircles them as within a belt of rude granite—divides the maritime region from the Great Basin, (Utah,) which it closes on the west; while the two valleys, by the innumerable streams and rivers which run from the south and the north, and converge to the bay of San Francisco, are bound and knit together:

The Sierra Nevada (says Mr. McDougall, page 180,) presents to my mind a most proper and feasible line for our State. Following the crest of that line from the north to the south, taking the waters as they flow, all that portion of country where the waters commence to flow to the west is what my proposition includes, and that gives us an area of country double as large as any other State in the Union. If you cast your eyes on the map, you will see three distinct divisions marked by Nature in the Territory of California, &c.

Here is that map, and Senators may see, strikingly delineated upon it, the three divisions alluded by Mr. McDougall—Utah; the Maritime Region embraced by the Sierra, and the Territory to the south, between the lines described in my substitute. And this opinion of the delegate from Sacramento is fully sustained by the highest authority which I can summon before the Senate—that of the learned, enterprising, and indefatigable officer to whose labors the United States and the world are so much indebted:

The valleys (says Col. Fremont, speaking of the valleys of the Sacramento and the San Joaquin) are one, discriminated only by the names of the rivers that traverse it. It is a single valley—a single geographical formation, near five hundred miles long—lying at the western base of the Sierra Nevada, and between it and the coast-range of mountains, and stretching across the head of the bay of San Francisco, with which a delta of twenty five miles connects it. The two rivers—San Joaquin and Sacramento—rise at opposite ends of this long valley; receive numerous streams, many of them bold rivers, from the Sierra Nevada; become themselves navigable rivers; flow towards each other; meet half-way, and enter the bay of San Francisco together, in the region of tide-water, making a continuous water line from one end to the other.—(Fremont's Memoir, p. 15.

The Sierra Nevada is an unmistakable boundary to these two valleys, leaving no natural outlet from them to the Pacific but through the *Golden Gate*, which unites the bay with the ocean. It closes the valleys on the northern side by a promontory, several thousand feet above the level of the sea, and to the south, by a gentle slope and neck that connects it with the Santa Barbara mountains, which carry the limit to the water's edge of the sea; and thus are the boundaries of the new State drawn by the hand of God in bold and indestructible characters.

But, independent of this great feature, which marks so peculiarly the geographical structure of the two valleys thus held embraced by the great Sierra, Nature has set another seal on its necessary separation from the country lying south of them. The climate is no longer the same. The soil is different, and the products altogether dissimilar. Here begins quite a new country :

South of Point Conception (says Fremont, page 38) the climate and the general appearance of the country exhibit a marked change. The coast from that cape tends almost directly east ; the face of the country has a more southern exposure, and is sheltered by ranges of low mountains from the violence and chilling effect of the northwest winds. Hence the climate is still more mild and genial, fostering a richer variety of productions, differing in kind from those of the northern coast. \* \* \* The soil is generally good, of a sandy or light character, easily cultivated, and in many places of extraordinary fertility.

Thus the limits which California assumes in her constitution, connect what Nature had intended should remain separate and distinct. They embrace countries that bear no relation to each other. The two great valleys formed by the San Joaquin and Sacramento rivers, with the plains that stretch along between the lower ranges of mountains on the coast, constitute the natural and most appropriate appurtenances of the new State, and embrace an area of territory sufficient to maintain millions of inhabitants, being something less than 100,000 square miles. I quote again from Fremont, pages 13 and 14 :

West of the Sierra Nevada, and between that mountain and the sea, is the second grand division of California, and the only part to which the name applies in the current language of the country. It is the occupied and inhabited part ; and so different in character, so divided by the mountain wall of the Sierra from the great basin above, as to constitute a region of itself, with a structure and configuration, a soil, climate, and productions of its own ; and as northern Persia may be referred to as some type of the former, so may Italy be referred to as some point of comparison with the latter. \* \* \* Looking westward from the summit of the Sierra, the main feature presented is the long, low, broad valley of the San Joaquin and Sacramento rivers—the two valleys forming one, five hundred miles long and fifty miles broad, lying along the base of the Sierra, and bounded on the west by the low coast-range of mountains which separates it from the sea.

California, below the Sierra Nevada, is about the extent of Italy from the Alps to the termination of the peninsula. It is of the same length, about the same breadth, consequently the same area—about one hundred thousand square miles—and presents much similarity of climate and production. Like Italy, it is a country of mountains and valleys. Different from it in its internal structure, it is formed for unity—its large rivers being concentric, and its large valleys appurtenant to the great central bay of San Francisco, within the area of whose waters the dominating power must be found.—(Ibid. p. 43.)

And now let us follow the map, and see what new region expands beyond the southern termination of the Sierra Nevada.

The country south of Point Conception is utterly cut from the valleys of the San Joaquin and Sacramento rivers, and can only communicate with them, to any extent, by the Pacific. I have already noticed its climate, its productions ; let me add a few remarks from Mr. Fremont. He traces the southern division from Point Conception to the Gulf of California, and speaking of it, says :

The productions of the South differ from those of the North, and of the Middle. Grapes, olives, Indian corn, have been its staples, with many assimilated grains. Tobacco has been introduced there ; and the uniform summer heat which follows the wet season, and is uninterrupted by rain, would make the southern country well adapted to cotton.

And we are reminded by the same authority (same page) that—

Vancouver found in 1792, at the Mission of Buena Ventura (latitude 3s deg. 16 min.) apples, pears, plums, figs, oranges, grapes, peaches, and pomegranates growing together with the plantain, banana, cocoa-nut, sugar-cane, and indigo, all yielding fruit in abundance, and of excellent quality.



Why, then, I ask, connect, by artificial limits, this country with the valleys above? Why block up the vast plains behind from all communication with the Pacific? Why put the eastern and southern basins out of reach of all navigable streams? Why cut them off from all outlet for their produce? Are we prepared to doom them forever to utter insignificance and dependence—to separate them from the rest of the world? No, no!

Mr. Sherwood, from New York. As to what ought to be our future boundary, I concur fully with several gentlemen who have expressed the opinion that the crest of the Sierra Nevada, or some line of longitude near it, should be the future permanent boundary of this State; and if that were the only question before the House, I should, without hesitation, vote for the proposition which embraces these limits. But there are other questions which ought to influence our action. \* \* \* \* \* And now, by taking in the whole of California to the New Mexico line, we can throw that question out of Congress, and keep it from discussion before the people, and thus remove the bone of contention between the North and the South. We should then do an act which may render certain that the Union cannot be dissolved. We are not aware of all the feelings that control the people of the Eastern States.—(Debates, p. 180.)

And the delegate from San Francisco, (Mr. Gwin,) alluding to the same subject, (Debates, 196,) uses the following startling language:

I have not the remotest idea that the Congress of the United States would give us this great extent of boundary if it was expected it would remain one State; and when gentlemen say that they will never give up an inch of the Pacific coast, they say what they cannot carry out. So far as I am concerned, I should like to see six States fronting on the Pacific in California.

Is it strange, then, that the South should revolt at the idea of letting California come into the Union, with limits that were avowedly fixed with a view to strip her of every inch of soil in the newly-acquired Territories, and to prepare the utter annihilation of her influence in the government by the forthcoming adjunction of six new free States, and of course of twelve additional free State Senators? See, Mr. President, what they themselves think of it?

Mr. Hastings, from Ohio. But gentlemen maintain that it is very important to include the whole territory, if possible, because if we settle the question of slavery now for the entire territory, it will be forever settled. \* \* \* \* \* I can assure you, gentlemen, that the new State of California will not be permitted to settle the great question of slavery, &c. \* \* \* Will the South permit it? No, sir. It will be insisted by the South that we have been urged to do so by influences brought to bear upon us from the North, &c.—(Debates, p. 173.)

The same. We have a very low estimate of the sagacity of the South if we suppose they will overlook this point. They will naturally say: You, a few Californians on the other side of the continent, assume to settle the great question of slavery for a tract of territory which must ultimately constitute thirteen or fourteen States of the Union!—(Debates, p. 177.)

Mr. McCarver. But do gentlemen suppose that the South would acquiesce in this arrangement, that they will permit us to settle the question of slavery?—(Debates, same page.)

The same. Do gentlemen suppose that Congress would have suffered Louisiana to settle that question of slavery for the whole territory known as Louisiana? Equally idle is the assumption that Congress will stand by, and allow a handfull of citizens in California to settle the slave question. It is a monstrous doctrine.—(Debates, p. 187.)

But they never expected that you would be brought to assent to such pretensions. Mr. Gwin expressed himself as follows:

We know that Congress has the right to settle our boundary, and the boundaries of all new States. It is a right which they will insist upon, and which they have always refused to surrender. And hence I have thought that if we make the boundary of the Sierra Nevada to run to the mouth of the Gila, Congress might say to us, You have included too much for one State; we will limit you to the territory in which your population resides; we will cut off all south of 36 deg. 30 min. South of that must be a territorial government. \* \* \* \* \* That will be the great battle-field. I confess I would greatly prefer a more restricted boundary. We have the natural boundary to make a greater State than any in the Union—the bay of San Francisco and its tributaries. If we had our choice, we would thus shape our boundaries.—(Debates, p. 445.)



Will you, then, let me repeat it again, admit California as she presents herself to you? We are told that she has already a population exceeding 150,000 of able-bodied men, capable to array in battle 75,000 of stout and hardy soldiers—of such soldiers as would command the choice of the Senator from Illinois (Mr. SHIELDS) in a great emergency. What, when she shall have a population of 500,000—of 1,000,000—of 2,000,000, and 3,000,000? How monstrous her importance, if she should remain in the Union! How gigantic her power, if at any time she should choose to go out of it! Cast your eyes a little ahead of you. Before them, the commerce and the luxuriant temptations of Hindostan, of China, Japan; behind them the almost boundless empire, stretching from the Straits of Fuca to the Gulf of Mexico, from the Pacific to the Rocky Mountains! Are you prepared thus to lay the foundation of a state of things that may and must eventually, either enable the new State to wield in her hands the destinies of the republic by the weight of numbers, which ere long she will cast in your national councils, or entice her to set out for herself with the bright prospects which the future holds out to her?

We are laying the foundation for a great empire, (says Mr. HALLECK from New York, page 434.) Let it be broad and deep. Let us be governed by no narrow or short-sighted policy. We are not legislating for a single day, or for a single generation, but for ages and generations yet in the womb of time. The position of California is unprecedented in history. She is already attracting the attention of the world. There is no spot on this continent which excites at the present time so much interest and concern. Men of intelligence from the old and the new States, and from the commercial cities of South America and Europe, are already rushing in large bodies to this land of promise. Every avenue of approach is crowded to excess; every vessel that reaches our ports is crowded to overflowing. This new population will form a State of high public spirit and of daring enterprise. No other portion of the globe will exercise a greater influence upon the civilization and commerce of the world, &c. We should therefore be careful, in laying the foundation of THE NEW EMPIRE, not to contract within too narrow limits the circle of its action, nor necessarily circumscribe the sphere of its usefulness.

But, while we suffer our attention to be thus engrossed by the claims which California pleads at our bar, we lose sight of Deseret entirely. What of her? She also has sent here her Constitution, and pleads for admission into the Union. Is she to be held as an independent community? Then she has her inherent rights as well as California proper. She is the oldest in date before us, and in her State organization. Her constitution extends her limits to the crest of the Sierra Nevada, and down the Sierra to the Santa Barbara mountains; thence along the Pacific to the Gulf of California, embracing the whole of the southern coast. Can you cut her short of those limits to sanction the posterior usurpation of California? Deseret acted in her right, if California did, when framing her constitution; and her boundaries, having been asserted long prior to California, (by seven months,) ought to prevail. If Deseret must be considered as being in subjection to California, why was she not summoned to the Monterey Convention?

But (says the delegate from San Francisco, Mr. Gwin) have they any right to complain? Are we not the majority? Does any one pretend to say, in this house or elsewhere, that the districts of California, established under proclamation of the Governor, do not contain a population that is not represented here? Have not thousands reached the country since we were elected? As a minority, were they not bound to submit to the majority? Sir, are we not here forcing a State government upon a portion of the people of California, whose delegates have, by their recorded votes, stated the fact that their constituents are unanimously against a State government, and in favor of a territorial organization? \* \* \* Gentlemen affect to believe, that in taking a large extent of territory not represented here, and from which no opposition to our action has been

made known to us, we are doing a great act of injustice to those people; when, at the same time, we have here before us the direct protest against a State government of a portion of the inhabitants of this Territory who are represented. But do we stop? Do we refrain from committing this act of injustice? No, sir; we go on, and include them.

Then, Mr. President, *might* is to supercede *right*. If not, why join the four protesting to the northwestern districts, and force them into submission to the State government organized by the Convention? Why take from them the right to provide for themselves that form of government which best suits them? They are Californians also; and most of them the Californians for whom provision was intended to be made, and protection was secured, in the treaty that transferred them to us; and the first act of the conqueror is to bring them, by a feat of political legerdemain, within the pale and under the authority of a government to which they were unanimously opposed!

The whole matter of the boundary, then, was cunningly devised to be merely *nominal*, purposely *unreal*, and thoroughly *deceptive*. It was to be *effective* and *irreversible* for a single object—TO EXCLUDE THE SOUTH FOREVER FROM ALL SHARE IN THE TERRITORIES, THROUGH SPOILIATIONS OF HER RIGHTS AND A DEGRADATION OF HER SOVEREIGNTY, WITHOUT AN ALTERNATIVE THAT DOES NOT END IN AN INGLORIOUS SUBMISSION OR A RUPTURE OF THE UNION!

I am now drawing rapidly to a close; and I promise the Senate that I shall do my best to shorten as much as possible the remaining remarks which I intend submitting to its consideration, for I feel I have trespassed already too long upon its patience.

My substitute proposes to restrict the limits of California to the 36th deg. 30 min. parallel of north latitude.

The original line of the Missouri compromise, Mr. President, came not at the South's instance, nor was it adopted through the South's choice. Her assent to it was constrained; it was the only alternative left her between the spoliation and abandonment of her equal rights north of 36 deg. 30 min., and the dismemberment of the Union; and to save the one she sacrificed the other, and was thus despoiled of three-fourths of the slaveholding territory of Louisiana. With the North the case was altogether different. She deemed it her interest to partition the territory by an east and west line, and in such a way that while southerners were excluded from migration and settlement north of the line, northerners were left free to migrate and settle on both sides of it, as they were before. Through the power of numbers, she established this principle of territorial partitions, and with the privilege of choice she fixed on the degree of latitude where the line should run.

This was in 1820. Precisely one-fourth of a century thereafter (1845) Texas, with her immense territory, was before Congress for admission into the Union. The North insisted that the line of the Missouri compromise should be applied to her territory. It was in vain to tell her that not a foot of this territory was the property of the United States, but belonged exclusively to the State of Texas. She replied that the *principle* of territorial partitions between the North and the South upon the line of 36 deg. 30 min., had been finally settled by the compromise of 1820, had been adhered to for one-fourth of a century, and was now as binding as the Constitution itself. She was inexorable: the South yielded again, and the Missouri line was stretched through the State of Texas.



Scarcely three years had elapsed before the question of the Missouri compromise was again mooted in Congress. It came up on the Oregon territorial bill. All of Oregon south of the Columbia river had been acquired under the Louisiana treaty of 1803, and of course was included in the Missouri compromise of 1820. But all of Oregon north of that river was acquired under the Florida treaty of 1819, which was not ratified until 1821. Well, the North claimed all of Oregon as free territory by force of the compromise, and the South recognised her right to it upon the basis of that adjustment.

The very last instance in which the question arose between the free and the slave States occurred in the act of acquiring California and New Mexico, some two years ago; and that was the first and the only instance, after twenty-eight years of steadfast adherence to the principle of territorial partitions, in which the free States betrayed the wish to depart from and repudiate that principle.

The circumstance occurred in this Senate convened in Executive session to deliberate upon the ratification of the treaty of Guadalupe Hidalgo. On that occasion, the Senator from Connecticut (Mr. BALDWIN) called upon the free States to disavow and repudiate the line of the Missouri compromise, by offering an amendment extending the Wilmot proviso over every acre of the Territories proposed to be ceded by the treaty. The ground which the Southern Senators took upon that amendment was this: If you abandon the line of the Missouri compromise, and adopt this amendment, we will at once bring the treaty to a vote and *reject it*—leaving you without an inch of domain upon which to inflict so flagrant an injustice upon the rights of the South! And as there were thirty Southern Senators in a Senate of sixty, and it would have required forty affirmative votes (two-thirds) to ratify, and twenty-one negative votes would have been sufficient to reject it, even in a full Senate, it was plain enough that the Southern Senators had it in their power to make good what they said they would do in such a conjuncture. The amendment was therefore voted down by a decided majority, and the treaty was adopted without it. Sir, without a word in the South's praise, it may be said, and no Senator here will deny it, that without the South's *military* share in the war, without her *monetary* share in expenses, and, above all, without her *votes* for the ratification of the treaty, we should not now have had a single acre of Territory to wrangle about. Not an inch of it could you have had, but by repudiating the Wilmot proviso, and through the implication that the line of the Missouri compromise would be maintained and applied to the new Territories. And was it so applied? It was not: for had it been, the new Territories would have received the ordinary organization long ago, and the country have been spared the fearful controversy which now disturbs and alarms it.

The very provisions of the present bill applicable to Utah and New Mexico, (as amended by the Senate,) had they been applied to California at the last session of Congress, would have been accepted by the South. Stretch the line of the Missouri compromise through all of them now, and to the Pacific, the South will still be content. As much as this sacrifices of what she has just claims to, as little as it secures of what is really her own, yet such is her love of union and peace that she will gladly shake hands with you upon that line, and be friends.



Some there are who seem to think that matters are materially changed from what they were at the last session of Congress, because California has since then met in convention, and formed a State constitution and government; and it would seem that, in their opinion at least, Congress could not stretch the line of the Missouri compromise across her *State* boundaries—as if Congress, since the last session, had parted with any power over California which it had before. Why, the powers of Congress over her boundaries are still the same, and doubtless supreme. There is not an instance where Congress parted with them, until it admitted a new State into the Union: it has exercised them in every instance of admission of a new State, and the very bill under debate is an authority and a voucher for what I am now contending for.

The Senate overlooks entirely that the State of Deseret (Utah) presented herself, some two months before California, with a regular State constitution, at the bar of the Senate, and with a memorial to Congress asking her admission into the Union! Deseret had a larger *permanent* population than California at the time they respectively formed their constitutions; for it was unanimously conceded in the California Convention, that she had from 30,000 to 40,000 inhabitants; and, what is most remarkable, her constitution was *unanimously* adopted, while that of California hardly reached 13,000!

Another astounding circumstance is, that California stretched her boundary line across the heart of Deseret, and appropriated to herself fully 70,000 square miles of that State.

The application of Deseret is still pending before the Senate; it has not been acted upon—still less has it been rejected: and yet here is the committee's bill, cutting off from Deseret these 70,000 square miles, and extending California's boundaries over it.

Let it never more be said, then, that Congress does not at this moment possess all the powers and rights over the boundaries of California that it ever did or does now possess over those of Utah and New Mexico.

It is obvious that there is not an obstacle in the way of Congress running the line of the Missouri Compromise through California to the Pacific, but its own WILL.

The North knows it. The South knows it; and she expects that it will be conceded to her, and will insist upon it, and accept of no adjustment that will fall short of it. There is not a journal of either party, nor have I seen a Southern man who, in yielding to the one or the other of the two plans presented to Congress—the one by the Executive, the other by the Committee of Thirteen—has not declared of either that it was not what it should be; that the North got *all* and gave *nothing*. There is scarcely one journal that does not avow its preference to the Missouri Compromise over all others. Some of them add, it is true, "we can't get it;" which I must think would be far more appropriate if coming from those who do not *want* it, or, having the power, *won't* yield it. But, sir, evidences that the universal South favors the line of the Missouri Compromise above all other plans have been amply displayed within the very walls of the Capitol; and here, sir, in the Senate, when that distinctive measure shall come to a final vote, I shall be both surprised and concerned if the Southern Senators shall not attest

their sense of what their respective States desire *most*, by casting something like a unanimous vote in its favor.

Congress possesses all the power over the boundaries of California *now*, that it possessed at the last session of Congress, and has exactly the same right to extend the line of the Missouri Compromise through it that it had *then*.

It follows from this, that it is entirely at its option whether the *Wilmot Proviso* shall be established in California south of  $36^{\circ} 30'$  or not. It is not *established* yet; it cannot be established unless Congress says *it shall*. And, Mr. President, do not expect that the South can be so easily deluded. She knows—she will know—that if Congress limits California by  $36^{\circ} 30'$ , it will have refused to establish the *Wilmot Proviso*; if it does not, and admits her into the Union as she is, *Congress WILL HAVE ESTABLISHED IT*.

Will not the admission of California, then, be identically, in substance and in fact, the establishment of the *Wilmot Proviso* south of  $36^{\circ} 30'$  BY CONGRESS? There cannot be a doubt of it. Well, sir, the mere menace of doing so heretofore threw the entire South into a flame, and united all hearts in resistance. Is it hoped that the consummation of that odious measure, through the virtue of this bill, will not unite them again, and kindle the flame that will blaze up fiercer than ever?

Have our brethren of the free States sufficiently pondered upon the consequences of putting the South to the wall, and forcing upon her the adoption of desperate measures? Will they shut their eyes on the clouds that rise on the horizon? Will they brave the dangers that surround us when they can avert them forever by adhering faithfully to a Compromise which they themselves contrived against and imposed upon the South, and when the South is willing to abide by it? Sir, is the permanency of this Republic of so little value to them that they will not secure it at such a price? Methinks I can read the characters which a mysterious hand is writing upon these walls!

Yet, sir, bad as I think this measure, disastrous as will be the consequence, and strenuously as I may struggle against it while it is open to debate, my opposition to it will end here. I may think no less of the wrong it occasions, the injury it inflicts, the oppression it menaces, and the dismemberment that awaits it; but whenever that controversy passes beyond this chamber, and reaches the point of collision and rupture, a deep sense of all I owe my adopted country will bid me abstain from it, and leave its fate to its native sons and to that all-wise Providence that holds in its hands the destinies of nations. Until the State that made me whatever I am summons me to other duties and other resolves, I shall abide by the Union. I shall neither forget nor disown how much I owe her, and how mighty are her claims on me! Mr. President, I can hardly suppress, and yet I feel quite unable to give utterance to, the emotions which those claims awaken in my heart. Only think of one who, in early life, for some humble strivings for liberty in his native land, brought down upon him the monarch's frown, and had to quit country, family, friends—everything that is dear and sacred to the human heart. To this, the land of the free—sanctified by the virtues and patriotism of a Washington, a Franklin, a Jefferson—he directed his steps. He came and found freedom and welcome. Poor, he

was cared for; friendless he was befriended; patronage seconded his efforts; success crowned his toils; and, rewarded and honored far above his merits, lo! the exile finds himself in the midst of the sages of the Republic—an associate with patriots in a Senate of equals! Ah! believe you, sir, that I could ever tear out of my heart such a remembrance as this?—that I could lift arm of mine in such a strife? May it perish sooner! But, sir, and you, Senators, allow me a last warning: JUSTICE to the South, if you wish PERPETUITY TO THE UNION! Whoever advises you to the contrary can only be inspired by that king of spirits

THE ORATOR "Whose throne is darkness in the abyss of light."







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11

MR. SOULE'S REJOINDER

TO

MESSRS. DOUGLAS AND WEBSTER.

ON HIS SUBSTITUTE TO THE THREE FIRST SECTIONS IN THE COMPROMISE BILL RESPECTING CALIFORNIA.

IN THE SENATE OF THE UNITED STATES, JUNE 28, 1850.

Mr. DOUGLAS having on the 26th, and Mr. WEBSTER on the 27th, replied to Mr. SOULE's speech of the 24th and 25th, on the 28th Mr. SOULE rejoined as follows :

MR. PRESIDENT: I rose on yesterday to ask the floor, after the distinguished Senator from Massachusetts (Mr. WEBSTER) had resumed his seat, with a view to answer at once, and on the spur of the moment, the arguments he had urged in reply to the speech which I had delivered two days before. But the extreme adroitness of my friend from Mississippi (Mr. FOOTE) to catch the eye and the ear of the Chair, enabled him to take the chance for himself, while it constrained me to withhold until now what brief remarks I had intended for the occasion.

The Senator from Massachusetts, upon entering into the debate, stated so fully and distinctly the main propositions which I had asserted, that I felt assured he would review them one by one, and show in what each and all had failed to convince him. He must, surely, have deemed some of them unworthy of any other notice than a bare mention, as he did abstain so scrupulously from alluding to them in the course of his terse and pointed comments. Sir, I shall attempt to bring them afresh to his consideration, that I may know whether or not he has determined to leave them unanswered.

The first proposition which I will lay down, in order to follow the Senator in his argument, will be to the effect, that, *whatever belongs to the sovereign, by virtue of his sovereignty, passes with it to the new sovereign, whenever the sovereignty is changed.*

Upon that principle did I maintain that, by the admission of California into the Union as a sovereign State, the public domain, now within her limits, would be transferred to her, *unless* secured by an ordinance of relinquishment prior to or contemporaneous with her admission; and I brought forth the authority of Vattel to show that "the right of domain was inseparable from the sovereignty."

To this the honorable Senator replies, that the sovereignty of the States, under our system of confederacy, is a limited sovereignty, and that the useful domain is distinct from and utterly unconnected with the eminent domain, which is the domain that belongs to and follows the sovereignty; and the very authority from which I quoted is invoked in support of that position.



Sir, the honorable Senator seemed to find it amiss that I should have extracted from Vattel a quotation which had been brought forward on this floor, some twenty years ago by an eminent statesman from Indiana, and that I should have used it in the very words of that statesman, as if the same authority, from the same book, was to undergo a process of variation as it passed through different hands ; and, with an emphasis somewhat sarcastic, he intimated that I, as well as the gentleman to whom I have just alluded, *had stopped short* in my quotation, and *left out* an important part of it, which materially qualified the principle asserted.

Mr. WEBSTER, (interposing.) I beg the gentleman's pardon. If he had heard my remarks distinctly, he would have observed that I attributed the stopping in the middle of the passage to the gentleman whom I had read from, and not the gentleman himself.

Mr. SOULE. Of course ; but, as I had used the same quotation, and stopped at the same place, it was but justice that I should take at least one-half of the rebuke which it met with at the hands of the distinguished Senator.

In connexion with this, I have to say : First, that it would be passing strange if, under such circumstances, and quoting the very words which had been quoted by the Senator from Indiana, I had introduced a language varying from or in any manner unlike that which he himself had used ; and, secondly, that it was not *unintentionally* that I left out the end of the paragraph from which I was reading. The *broad principle* was all that I aimed at drawing the attention of the Senate to. I shall presently show that the *sequel*, far from weakening my argument, would but have imparted to it additional strength and appropriateness. What was it I extracted from Vattel ? Why, this : " That sovereignty is necessarily and inseparably connected with the right of soil to the territory over which it is exercised." What is it that the honorable Senator would have me add ? " That a sovereign, a nation, *may* possess fiefs, &c. ; within the limits of a country not subject to their jurisdiction"—the very words showing that, in the intendment of the writer, the *useful domain* generally and of right belongs to the sovereign, although it *may* be separated from the sovereignty ! Was I not admitting the exception when contending that it should be saved by a solemn reservation from passing to the new sovereign ? My argument was this : The United States have no other right to the public domain within the Territories ceded to them by Mexico but that which Mexico herself possessed over them. It was as sovereign, and by virtue of her sovereignty, that Mexico held that right ; and the United States, under her, can claim no other. They, then, possess the domain in California by virtue of their sovereignty ; and, if so, they necessarily divest themselves of it from the moment that, through their sufferance and sanction, it passes under the jurisdiction of a new sovereign, provided *always it is not reserved* by an act prior to or contemporaneous with the investiture of the new sovereign. Now, Mr. President, it is no answer to this, that, according to Vattel, even a sovereign *may* possess lands and other property within a sovereignty *not his own*. So far my argument admits it. But the question occurs, which has not been answered yet : What title have you to the useful domain over which you claim to retain your control, if it be not the treaty ? Look at it, and point out to me, if you can, where it transfers to you *eo nomine*, the *useful domain* ? You cannot claim it under its provisions, except through the sovereignty which it transfers to you, and through the enlargement of boundaries over which it allows you to extend your jurisdiction ; and, if so, will you not divest yourselves of that domain when, in the same manner, you will transfer your own sovereignty to the new State ? Precisely so ; by virtue of the same principle, and exactly through the same implication, unless you reserve it in the manner provided for in the substitute before the Senate.

The distinguished Senator, whilst so punctilious on the point of *full quotation*, has fallen himself into the blunder for which he so wittily chid the statesman through whose track he was pursuing me, and has omitted a most important remark, which Vattel adds to the words which he himself quoted from his book. It is this :

That in such cases the prince or the nation, holding property in the territory of another prince or another nation, hold it as by *title of private ownership*.

I ask, then, if such be the exception, how can it be made to apply to the United States, holding lands, as they do, within the borders of an individual State? They hold them exempt from taxation—an exemption which, if carried out to its extreme consequences, would take away from the State the main resource through which she can sustain herself and support her government.

If the United States can possess lands to any extent within the limits of a State, they may—and, with the vast means they possess, I would not be surprised if they were to realize some day or other such a monstrous contingency—*possess them all*: they may, as I said before, cover them with a federal tenantry, and, by perpetuating such a state of things, actually destroy all independence in the State, and reduce her to a condition of perfect vassalage.

What is to become of her sovereignty, if the Federal Government can lease *her* lands, send their agents to collect the rents, and forever remain exonerated from all taxation, &c.?

Is such a condition of a State in harmony with the republican spirit of our institutions? Is it constitutional? Is it necessary for any purpose of government or to carry out any of its powers? It is not. And if such a system takes root and is submitted to, the independence of the States is gone, and that clause in the Constitution annulled, which restricts the right of the United States to possess lands within the limits of a State to “forts, magazines, arsenals, dockyards, and other needful buildings.” Nor is it, I maintain, necessary for any purpose of the government. “The Territories are ours,” says the Senator from Massachusetts; “they are the property of the United States, and remain such until disposed of by them.” That is precisely what I contend for; the Territories are *yours*, and the public domain within them is *your property*, but so long only as they remain under your sovereign jurisdiction; and as you may so keep them until you have disposed of every foot of soil which you have within them, I can conceive of no necessity for suffering you to hold an absolute contro’ over them, beyond the time you shall think fit to admit them as sovereign States into the Union. Unless, therefore, you dispose of the domain before surrendering your sovereignty, or unless you secure its reservation for specific purposes, by such a compact as will, not confer upon you rights which the Constitution withholds, but enable you, through the sufferance secured by the relinquishment of all claim on the part of the States, to dispose of the domain, it is gone;—irretrievably gone. It escheats to the new State, and becomes absolutely *hers*.

But, Mr. President, I am met with another authority of a still greater weight than that of Vattel, as it purports to be an opinion of the Supreme Court of the United States upon the abstract matters at issue in this controversy, (Pollard’s Lessee *vs.* Hagan et al. 3d Howard.) Although I doubt seriously whether any adjudication, come from what tribunal it may, can add much cogency to what the distinguished Senator has said, or carry with it more influence than his name and opinions bring to bear on all subjects of national interest, I will admit freely that such an authority might, in a court of justice, be deemed of more import and consequence. Yet we are discussing here a political question, and our courts have again and again declared that, with respect to such questions, they would always be guided by the action of the Government, under the authority of Congress. Besides, the opinion referred to, stands isolated, and can by no means be considered as settling the jurisprudence

of the country upon the matters it adjudicates. It was delivered in a case between private parties, on an occasion in which the respective and conflicting pretensions of two contending sovereignties could not be fully brought into discussion. As far as that question went, it was a matter *coram non jndice*. The point in dispute was, whether or not the ownership of an alluvial increment of soil, formed in front of a private property in the bay of Mobile, belonged to the riparian owner; and his right to the alluvion was pressed upon the ground that the United States, under whom the riparian owner held, having originally acquired that property from Spain, had acquired it with all the rights inhering to the same by the laws of that country, and as such it had been transferred to him by them. Well, the court decided that the ownership of the alluvial soil was *in the State of Alabama*, who could clearly set up no right or claim to it, except under her sovereignty; and so far, therefore, the opinion goes in support of my argument.

There are in it, it is true, several *obiter dicta*, tending to establish that the United States *may* possess lands within the borders of a State, without interfering at all with her sovereignty; but of which lands does the opinion speak? Of lands possessed by them through specific deeds of cession from the States, and not of lands held under the right and by virtue of the sovereignty. Now, I insist that the public domain which the United States hold in California is of the latter kind; and I have fully illustrated this position when alluding to the treaty of cession. As such, it is inherent to and passes with the sovereignty, unless reserved by a specific contract before the territory, within which it lies, is transferred to the new sovereign. Moreover, it must not be overlooked that precisely such an ordinance as my substitute provides for had already been executed by Alabama, and in the most solemn form *before* she was admitted as a State into the Union.

Nor should that decree, I apprehend, isolated as it is and alone, and a *res inter alios acta*, be considered as paramount to the settled political doctrine held and adhered to invariably by the thirty Congresses that have succeeded each other during these sixty years past. Whatever be my respect and deference to the opinions of the Supreme Court, I cannot shut my eyes to the fact that it has happened more than once that their judgment, upon great constitutional questions, was repudiated by the universal sentiment of the whole country; and I need not allude to that which sanctioned the constitutionality of the *alien and sedition laws*, and which a gust of an incensed public opinion scattered to the winds of Heaven, and swept away from the catalogue of precedents, not to be referred to any more hereafter.

But, should I be compelled to surrender all this, the main difficulty will by no means be removed. The opinion of the Supreme Court, in the case cited, only recognises in the United States the power to hold lands in the *States* for specific and temporary purposes; and from the principle laid down in Vattel, they cannot hold them, except "*in the manner of private individuals*." What, then, of the mines?—If my argument with respect to them is conclusive, (and no one yet was so rash as to assail it,) they are gone and belong of right to the first occupant; for the domain throughout all New Spain (Mexico) was, from the days of Philip II, shorn of all right over them, except in so far as the sovereign retained that of levying a duty on the proceeds of them. Now, *that right* is a thing incorporeal, essentially belonging to and to be exercised only by the sovereign. It is inherent to sovereignty; it passes with it, is inseparable from it, and constitutes its most important muniment and privilege. Will you say, then, that the United States do not part with it when they transfer their sovereignty to a new State? You cannot. If, therefore, you do not save the domain by an effective and absolute relinquishment on the part of the new State of all claim or title to it, it is lost to *you* and forever secured to *her*. The consequence is irresistibly unavoidable.



I had said that the uniform opinion and policy of Congress, as expressed by its action whenever the case has occurred of a new State asking to be admitted into the Union, bear me out in the view which I have taken of this subject. But the honorable Senator from Illinois (Mr. DOUGLASS) has boldly denied the fact, and contends, with an earnestness quite characteristic of his tone and manner, even when he is advocating a most ungracious and stubborn case, "that the political history of the country is invariably against me." Is that what the Senator contends for? I wish to state his position distinctly.

Mr. DOUGLASS. That is the proposition that the precedents growing out of the admission of new States are all one way, beginning from Tennessee up; that the current of authority is decidedly against him.

Mr. SOULE. I am glad that I have not misstated the ground taken by the honorable Senator. It is as I laid it down; and the Senator from Massachusetts, (Mr. WEBSTER,) much to my surprise, has given it the weight of his unconditional endorsement. Sir, are the honorable Senators right? Am I wrong? Let history speak forth through the statute-book. But, lest I should again be misunderstood—for I had not the good fortune of being fairly met on this point by either of the Senators—I will again lay down my proposition with respect to that matter, and I call specially their attention to its terms. It is this: "That Congress, by requiring in every instance of a new State (with unappropriated public lands) asking to be admitted into the Union, that she should execute an act of relinquishment of all title or claim to the public lands, or bind herself to conform her constitution to the articles of compact of the ordinance of 1787, has acknowledged and proclaimed that *without it* the domain would pass, with the sovereignty, to the State. Now for the proof:

Since the formation of this Government, there have been seventeen States admitted into the Union. The State of Vermont came first, (March 4th, 1791.) She was required to pass no ordinance, there being no *unappropriated* public lands within her limits. Next came Kentucky, (June 1st, 1792.) Virginia, upon giving her assent to its separate organization as a State, did not pretend to retain the public domain, but let it go with the sovereignty, and made no reserve. The domain passed to the new State; and as she was admitted into the Union *without* any act of relinquishment of the public lands within her limits, she made them *hers*, and the United States have never, to my knowledge, attempted to interfere with them.

Then came Tennessee, about whom the Senator from Illinois said so much, under the impression that, having been admitted unconditionally, she, at least, constituted an exception to the rule which (he could not deny) had been applied to other States. I will here remind the honorable Senator, with respect to this State, that her case was a peculiar one. Her territory had been ceded to the United States by North Carolina; and, in the act of cession, the latter had solemnly stipulated that "All lands intended to be ceded by virtue of this act to the United States of America, and not appropriated, shall be considered as a *common fund* for the use and benefit of the United States, North Carolina included, according to their respective shares in the public expenditure, and shall be faithfully disposed of *for that purpose, and for no other use or purpose whatsoever*."—(Statutes at Large, vol. 1, p. 108.) So that not only were the public lands within that State protected from escheating to Tennessee, but the United States were precluded from all authority through which even their sufferance might have enabled her to grasp them.

Ohio came next, (November 29th, 1802.) The public domain within her boundaries had been sufficiently secured by the ordinance of 1787, which was binding on all States to be carved out of the Northwestern Territory; and she was only required to provide in her ordinance that the public lands should be secured against taxation by the State.

Louisiana (February 20th, 1811) was permitted to form a State Constitution upon the express condition that she should provide, by an ordinance passed in convention, "that the people inhabiting the said Territory do agree and declare THAT THEY FOREVER DISCLAIM ALL RIGHT OR TITLE TO THE WASTE AND UNAPPROPRIATED LANDS LYING WITHIN SAID TERRITORY, and that the SAME SHALL remain at the sole and entire disposition of the United States."—(Statutes, v 2, p. 642.)

Indiana was authorized to organize herself into a State Government, upon the condition that her constitution "*should not be repugnant to the ordinance of 1787*, which provided exactly the same thing which Louisiana was required to provide in her ordinance with respect to the public domain.—(Statutes, vol. 3, p. 290.)

Missouri, also, was required, before being admitted into the Union, to bind "her legislature not to interfere with the primary disposal of the soil by the United States."—Statutes, vol. 3, p. 545.)

Illinois came under the stipulations of the ordinance of 1787.—(Statutes, vol. 3, p. 430.)

Alabama, Mississippi, Arkansas, Michigan, Iowa, and Wisconsin were all required to submit to the stern and inflexible rule; and the principle, that the *right to the soil* passed to the States with the sovereignty, was so prevalent, that on the occasion of certain advantages tendered to Florida, the act granting them—being "an act supplemental to the act admitting Florida, &c, into the Union"—recites that the said advantages are granted "in consideration of the concessions made by the State of Florida in regard to the public lands," &c.

And, thus I have made good my proposition, that "whenever a new State, having unappropriated public lands within her limits, has presented herself for admission into the Union, with the exception of those formed out of the Northwestern Territories, which were invariably required to make their constitution in accordance with the articles of compact of the ordinance of 1787, she has been admitted upon the express condition that "she would relinquish *all claim and title* to the public lands within her limits, and not interfere with the primary disposal of them by the United States." Why these requirements, if the right to the soil was not to pass to the new State with the sovereignty? I repeat it for the last time, the question may have been turned; it has not been met—it remains unanswered.

I come now to that part of the argument of the Senator from Massachusetts which respects the boundaries. He insists that they are not extravagant; that they hardly embrace 5,000 square miles of agricultural lands.

MR. WEBSTER. If the Senator will allow me, I was speaking, when I made that remark, of that portion of California that would be embraced south of the proposed line.

MR. SOULE. I had understood the Senator as asserting that the boundaries, as restricted by my substitute, would not leave to California sufficient agricultural lands to sustain her population.

MR. WEBSTER. What I said was exactly this: "The gentleman had argued that California, with her present boundaries, contained 153,000 square miles, and that 53,000 square miles was the average for a new State, and that California, therefore, had three times the average. I said in regard to that two things. The first was, that that part of the country which lies east of the Sierra Nevada, from the foot of the eastern side of that mountain range to the line, making some thirty or forty thousand square miles, was but a mere sandy desert; and then I said that, taking from the mountains those portions which were useful for agriculture, the result would be, that California would have much less than the other States to which I referred.

MR. SOULE. I had entirely misconceived the position taken by the honorable Senator. I beg his pardon, and will proceed to consider how far, even where he stands, he is supported by the *geography* of the country. The double valley, watered by the San Joaquin and the Sacra-

mento rivers, alone embraces an area of the choicest agricultural lands, extending upwards of 500 miles in length, and from fifty to sixty miles in breadth. This, of itself, gives fully 25,000 square miles of arable soil. The intervening plains, between the coast mountains, add greatly to the country lands susceptible of cultivation. There are, besides, vast and rich pastures, immense forests, within the embrace of the Sierra; and thus is concentrated in the basin which it girdles an extent of territory more than amply sufficient to maintain and support a population twice as large as that of the State of New York. But the main advantages of California are those which she derives from her position and from her mineral wealth. Through the first, she has the command of all the commerce of China, of Hindostan, of Polynesia, of Japan; through the second, she holds the scale where is to be poised the momentous problem of the relation in which shall stand hereafter all the articles of trade, all descriptions of exchangeable property, with the signs of value that have heretofore rated their respective prices, and of which she is as sure as fate to have hereafter the almost exclusive monopoly. Why go beyond the Sierra for her limits? We are told that the country east and south of that boundary is but a waste and a barren desert. Why take it, when you might, by leaving it out, satisfy the South and quiet the whole country?

Such is not the fact. The country south of 36 deg. 30 min. has all the conditions of climate, of soil, of productiveness that can render slave labor valuable; it has its mines, its tobacco districts, its cotton and sugar lands! What? talk you of 5,000 square miles of agricultural region? The valley of San Juan alone, the most fertile and luxuriant spot in all this continent, embraces more than 9,000 square miles, and the Colorado runs its fertilizing waters over a country equal in dimensions and in productiveness to the most exuberant counties in Louisiana!

But we are advised to be in haste; we are urged to let the Californians come in, no matter how, lest they should set out for themselves, and forever separate from the Union. Is that danger real? What! Now, when they have hardly reached a population of 150,000; when nothing attaches them to the country except the *auri sacra fames*; when they still are bound to us by all the recollections of the past, by all the hopes of the future; when they cannot leave us without rending asunder all those associations that endear life and make it happy—they dream of secession, of independence! What will it be when they have grown to millions?—when habit, interest, new affections shall have reconciled them to a permanent settlement there?

And, here, let me urge upon you again the fearful dilemma with which I closed one of my arguments the other day. Look ahead! look ahead!! A monster State in the Union—or a gigantic Empire out of it! The destinies of the republic at the mercy of the stupendous weight which, through the power of numbers, the new State will cast in your councils—or your commerce, your influence in the Pacific, in the seas of China, and in the Indian Archipelago, crushed under the heel of a powerful and hardy rival! Are you prepared for this?

Then, will not the South see clear into all this? How long do you expect to delude her by the deceitful offerings of your bill? Do not underrate her discernment. She will not be caught in the snare. She will detect the wile. She will find out by what artifice of legislation you inflict upon her, through the agency of California, the very wrong, the menace of which brought this confederacy to the brink of dissolution; and in what manner that Wilmot *Proviso* which you affect to denounce in your reports, in your speeches, in your letters, is brought in—and by this bill, to a solemn and irrevocable sanction, through the admission of California, with a Constitution which, in reality and in fact, extends it over upwards of 100,000 square miles beyond its natural jurisdiction. I am done.





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SPEECH

OF

*Pierre*  
MR. SOULE, OF LOUISIANA,

ON

NON-INTERVENTION,

DELIVERED

IN THE SENATE OF THE UNITED STATES,

MARCH 22, 1852.

---

"There is a rank due to the United States among nations which will be withheld, if not entirely lost, by the reputation of weakness."—*Washington's Message of December 3, 1793.*

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WASHINGTON:  
PRINTED BY JOHN T. TOWERS.  
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## RESOLUTIONS.

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Gen. CASS' amendment, designed as a substitute for Mr. CLARKE's resolutions :

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That while the people of the United States sympathize with all nations who are striving to establish free Governments, yet they recognize the great principle of the law of nations which assures to each of them the right to manage its own internal affairs in its own way, and to establish, alter, or abolish its Government at pleasure, without the interference of any other Power; and they have not seen, nor could they again see, without deep concern, the violation of this principle of national independence.

Mr. CLARKE's last resolution :

*Resolved,* That although we adhere to these essential principles of non-intervention as forming the true and lasting foundation of our prosperity and happiness, yet whenever a provident foresight shall warn us that our own liberties and institutions are threatened, then a just regard to our own safety will require us to advance to the conflict rather than await the approach of the foes of our constitutional freedom and of human liberty.





## MR. SOULE'S SPEECH.

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Mr. CLARKE's resolutions, and the amendments moved to the same by Mr. SEWARD, of New York, and General CASS, of Michigan, being under consideration—

Mr. SOULE, of Louisiana, rose and said :

I am appalled, Mr. President, by the vast and imposing assemblage which I see congregated in this hall. I fear much, sir, that the announcement, so flatteringly made by some newspapers, of the part which it was presumed I would take in this contest, has raised expectations which it will not be in my power to gratify ; and the anxiety, the distrust, and torment, which such an apprehension is so well calculated to engender, are not a little augmented by the awful magnitude and the difficulties of the subject before me. However, sir, I have no wish to avoid the task. It were too late for me now to disown its claims or to repudiate its exigencies. I will proceed with it, tremblingly, yet with some faint hope that I may still be able to bear its burden in a manner not altogether unbecoming the dignity of an American Senator.

Whatever be the fate that awaits the resolutions upon your table, Mr. President, the debate which has grown out of them will have its influence and bear its fruits. I rejoice that it has afforded us a fit opportunity for proclaiming to the world our abiding faith in the rectitude and ultimate triumph of those great principles on which rest the hopes and the destinies of man-

kind. We are heard at a great distance when we speak from the high places which we occupy here. What of hope and encouragement, what of interest and sympathy we express for down-trodden and oppressed nations is echoed throughout the remotest regions of the world; and while we give utterance to the thought, it runs swiftly on the magic wire, until it moves to congenial and harmonious vibration every fibre of the human heart.

I have no conception that there is so glaring a discrepancy in the sentiments entertained by those Senators who first moved in this debate. What of disagreement I have been able to discern among them, would seem to arise, rather from a misconstruction of the object aimed at by each respectively, than from any real antipathy in their opinions as to what principles we should assert and vindicate here. Though the original resolutions may have been intended (as I have no doubt they were) as a sort of political breakwater, thrown up to compress and still those surges of the popular sentiment to which I took occasion some time ago to allude—though they seem to advocate impassiveness, absolute impassiveness, as the only policy under which we can grow and prosper—yet a discerning eye will not fail to detect that feverish and restless anxiety, the offspring of a keen and unerring foresight, which betrays itself through the dubious, misty, timid, I had almost said bashful admission contained in the last of them, of a possible contingency on the occasion of which “a just regard to our own safety *will require us to advance to the conflict rather than await the approach of the foes of constitutional freedom and of human liberty.*”

The policy so solemnly commended, and so skillfully developed in the remarkable speech by which the Sena-



tor from Rhode Island (Mr. CLARKE) opened this debate, is here held under check by the express reservation and protest that it may come to its last day, and be superseded by another that *will require us to advance*—mark the word!—*to advance to the conflict, and to fight for constitutional freedom and for human liberty.*

But, much to my wonder, and still more to my deep concern, that contingency, so strikingly pointed at in the resolutions, was entirely overlooked in the speech, where it is not even alluded to. Sir, I had determined that it should not remain unheeded, and I now plead its implied concessions in vindication of the views which I propose to lay before the Senate.

I am decidedly against this country being pent up within the narrow circle drawn around it by the advocates of the policy of impassiveness. Escorted though it comes to us by the authority and imposing names of men deservedly honored in our history, that policy has no claims to my sympathies—it is set forth in antagonism to the policy by which the statesmen of the progressive school attempt to initiate, as it is said, a system of interference with the affairs of other nations; the first finds security in inertness; the second, in action. One, under that infatuation which a long series of successes is so apt to produce, points to the past, and credits them all to a system of measures which but prefaced their history; the other invokes the very state of things which those successes have brought about, and, obeying the dictates of new exigencies, strives to turn to profit the solemn warning "*non visdem artibus, retinentur quibus comparantur.*" I am for the last; and, while vindicating its expediency, I shall attempt to show that the opposed policy cannot claim the support which it so freely borrows from the doctrines and teachings of the

immortal sages under whose protection it shelters itself. Sir, the policy of Washington, as elucidated by his own acts, was by no means that unimpassioned, phlegmatic, cautious, and inactive policy which our opponents would induce us to believe; but, on the contrary, a watchful, sharp, and active policy, ready to interpose wherever and whenever a great interest or a great principle was at stake, and disdaining that submissive wisdom which could abide the most revolting assumptions on the part of foreign powers, from the moment that they did not affect too ostensibly the immediate concerns of the republic.

Through a most strange confusion, the presumed principles implied in the proclamation of neutrality in 1793 are made the ground-work—nay, the very foundation—of those proclaimed in the Farewell Address of the revered patriot and hero; yet who knows not that the neutrality adopted in 1793 was but an essentially transient measure, looking solely to the existing situation of the country, and to the demands which that situation, with its surrounding perils, made upon it?—that it was considered in no other light by General Washington himself is most unequivocally exhibited from the fact that, alluding to this very subject in his Farewell Address, he speaks of it thus: “The period is not far off when we may take such an attitude as will cause *the neutrality* WE MAY AT ANY TIME RESOLVE UPON TO BE RESPECTED,” &c. And this is not the only evidence of the meaning which he intended that the proclamation should convey. It came to be debated in the cabinet council how far, in issuing that proclamation, General Washington had not transcended the powers vested in the President by the Constitution; and we have the authority of Mr. Jefferson to the effect that “*he apologized for the use of the term NEUTRALITY.*” “The President,” re-

marks Mr. Jefferson, "declared he never had an idea that he could bind Congress against declaring war, or that any thing contained in his proclamation could look beyond the day of their meeting." \* \* \* The President said "he had but one object—the keeping our people quite till Congress should meet."

Sir, the circumstances under which the neutrality of 1793 was resolved upon are of sufficient interest, I should imagine, to deserve a passing notice, and to command attention, for a few moments at least, on the part of the Senate.

We were just emerging from that sea of agitation which had been stirred up by the recent remodelling of the National Government, with the treasury exhausted by the incessant demands that were every day made upon it, to satisfy the obligations incurred during a protracted and expensive war. We were unsettled, restless; doubtful whether the new experiment would realize the hopes of those who had advised and attempted it. A war had just broken out between France and England—I should say, between France and coalized Europe;—France alone struggling for her liberties and the liberties of mankind against the world in arms. The question arose what part America should act in that awful conflict. Would she redeem those pledges which ardent and enthusiastic minds had persuaded themselves she was under, and, taking the part of France, strike by her side for the liberties of the world? She could not join England in a crusade against those liberties. Would she, then, participate in the struggle, or would she rather remain a quiet spectator of the gigantic scene, and trust to God the destinies of her ally? Necessity—stern, inflexible necessity—could alone impel her to choose the last alternative.



"This was," says Lyman in his American Diplomacy, "an extraordinary period; France had now become professedly a republic, and was threatened with annihilation by a European coalition, at the head of which was England." "The distance of America from Europe—the youth and peculiarity of her Government, at that time little understood, and certainly far from being confirmed—the narrowness of her resources—the entire absence of every species of armament—powerfully combined to point out the course she should adopt." And, now, how curious it is to see what little that proclamation of neutrality did realize for America. It was issued in April, 1793. In the summer following, Great Britain, Russia, Spain, Prussia, and the empire of Germany entered into treaty, for the purpose, among other things, "of closing their ports and prohibiting the exportation of naval stores, corn, grain, and provisions, from their ports to the ports of France." They also engaged "to take all other measures in their power for injuring the commerce of France," and to unite all their efforts "*to prevent other powers not implicated in the war from giving any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or property of the French on the sea or in the ports of France.*" You well know, Mr. President, that in the celebrated treaty of Utrecht, between France and England, even naval stores were declared "free of war;" and you know also that there are treaties on record between England and the United Provinces in 1645, with France in 1667 and 1668, with Spain in 1713, with Denmark in 1782, and with Russia in 1804, in which *provisions* are by name *excluded from the list of contraband*. Shall I say anything of the insults, wrongs, outrages, offered by England to America under the neutrality

policy? Why, sir, they were such as to force upon us within less than a year the necessity of sending a special embassy to the court of St. James, to plead redress for past offences, and, at all events, to obtain security that our rights, under the neutrality, should be in future recognised and respected.

The alarm of the country—its sufferings, its impatience, and irritation—may well be judged from the intimations which our minister was directed to give of them in England. Says our Secretary of State, in his instructions to Mr. Jay, 1794: “You will keep alive in the mind of the British minister that opinion which the solemnity of a special mission must naturally inspire of the *strong agitations* excited in the people of the United States by the *disturbed* condition between them and Great Britain.” \* \* \* \* “You will mention, with *due stress*, the *general irritation* of the United States, at the *vexations, spoliations, captures,*” &c. &c.

Such was the situation in which the United States found themselves in the year 1794, hardly ten months after the issuing of the famous proclamation. Mr. Jay succeeded in effecting a treaty. What that treaty secured to the United States is what I propose now to investigate. His instructions were explicit. The anxiety of the United States to see those principles acknowledged, which alone could render our neutrality available, was extreme. What did the treaty end in? Turn first to the instructions under which Mr. Jay was directed to act. He was to listen to the suggestions of a commercial treaty, and to keep in view, amongst other objects, the following:

1st. Reciprocity in navigation, particularly to the West Indies, and even to the East Indies.

2d. Free ships to make free goods.

3d. Proper security for the safety of neutral commerce in other respects, and particularly by declaring provisions never to be contraband, except in the strongest possible case; by defining a blockade; by restricting the opportunities of vexation in visiting vessels.

And what did the treaty allow? Let me tell you: A direct trade between the United States and the West Indies in vessels not exceeding *seventy tons* in burden; but the United States were under an obligation to restrain their vessels from carrying certain articles, the produce of those islands, to any other place than the United States. The Americans were forbidden from "carrying any molasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his Majesty's islands or from the United States, to any part of the world except the United States." The treaty restored the ports of the western frontier, but without indemnity for their long detention, or for the slaves carried off by Sir Guy Carleton. Ship timber, tar, hemp, sails, and copper were declared contraband, though free in all other treaties made by the United States. Provisions were declared contraband, and there was an express declaration that the flag did not cover the merchandize—the only treaty ever signed by the United States in which such an acknowledgment is to be found. England, however, at the peace of Utrecht, had acknowledged *that the flag covered the merchandize*. Thus nothing was secured. None of the rights which Mr. Jay had been directed to assert and vindicate were recognized, and the treaty signed by him justified the judgment passed upon its merits, through the appellation by which it went, of *an instrument that settled nothing*. Nor were those rights respected by England after the treaty. Her aggressions went on, increasing until they forced us into the



very extremities which the neutrality was intended to provide against; and we realized the pungent witticism by which one of our early statesmen defines a neutral power—"a power that both belligerents plunder with impunity."

Lyman, from whom I have already quoted, writes thus of the motives which induced the United States so long to forbear under repeated inflictions of outrage and wrong:

"America, a new State, was thrust hastily, with all the attributes of sovereignty, into the midst of the old nations of Europe. Not having grown up with them, trying her wings, feeling her strength as she advanced to mature age along with those powers, her relative position was not ascertained, and acts of the parties engaged in the European wars were patiently endured, not from want of sagacity and spirit, both to perceive and resist the injustice and wrong, but from a well-founded doubt and distrust of the real strength of the people."

And, qualifying, afterwards, the system of self-denial which was then adopted, he adds that it was "both originally mistaken, and pursued to a pernicious extent."

I desire now to direct the attention of the Senate to the sentiments entertained by Washington of the obligations which this country had assumed under the proclamation of neutrality. He clearly did not consider that it had so fettered this Government as to wrest from it all discretion to determine how far it could interfere and take concern in the affairs of the world. He was not the man who could have surrendered the right of asserting boldly and fearlessly those principles which were at the very bottom of our independence, and stood up to our dignity, whenever and wherever they might be assailed or put in danger.

Sir, at the very moment that he was instructing Mr. Jay to listen to propositions of a treaty on the part of

England—at the very time he was asserting, through that minister, the rights of neutrals—he was urging also the expediency of sounding ministers then at the Court of London, as to the probability of an alliance with their respective nations, to support certain principles involving great international interests.

I find amongst the instructions given to Mr. Jay, the following :

“ You will have no difficulty in gaining access to the ministers of Russia, Denmark, and Sweden, at the Court of London. The principles of the armed neutrality would abundantly cover our neutral rights. If, therefore, the situation of things, with respect to Great Britain, should dictate the necessity of taking the precaution of foreign co-operation upon this head, if no prospect of accommodation should be thwarted by the danger of such a measure being known to the British Court, and an entire view of all our political relations shall, in your judgment, permit the step, *you will sound those ministers upon the probability of an alliance with their nations to support those principles.*”

One of Mr. Jay's objects was, therefore, to obtain the recognition of *certain principles* ; but, if he should not succeed in this, what was he to do ? Await until they were assailed and put in peril at our own doors ? By no means ; but proclaim them to the world under the sanction of powers allied with us to enforce them, that it might be understood on what grounds America would act, and would insist to be dealt with.

There is another fact in the diplomatic history of that epoch which most strikingly illustrates what opinions were entertained by the immediate advisers of Washington with respect to the course which it might be expedient for this country to pursue, under circumstances arising out of that neutrality which, it is said, constituted then the policy of this Government.

But before I proceed to enter this branch of the subject, let me place before you, Mr. President, a fact that will speak out louder than any words of mine, how far Washington himself considered that his proclamation of neutrality constrained the American Government from interposing where the eternal right of nations to provide for themselves a suitable Government was interfered with by powers foreign to them. On the 10th of June, 1794, he directs his Secretary of State to instruct Mr. Monroe—then our minister to France—to the following effect:

“You will assure the French Government that the President has been an early and decided friend of the French revolution; and whatever reason there may have been, under our ignorance of facts and policy, to suspend an opinion upon some of its important transactions, yet *is he immutable* in his wishes for its accomplishment—*incapable of assenting to the right of any foreign Prince to meddle with its interior arrangements.*”

Nor were these proceedings on the part of the American Government in contradiction with the recommendations contained in the Farewell Address, as I shall hereafter most conclusively show.

Let me now remark that the address bears date September 17, 1796. We are—I mean in thought—in 1797, at a most critical epoch of our history, when painful difficulties were on the eve of breaking out between us and France. Washington had been recalled to the command of the army. Alexander Hamilton was to be his second in that command. Such was the confidence which Washington reposed in Gen. Hamilton that he made his appointment to this high rank the condition of his own acceptance of the trust tendered him by President Adams.

The Spanish colonies were in great ferment. The example of the British colonies had roused their spirit,



and moved them into an active search of assistance to shake off the authority of the mother country. They had sent to Europe emissaries, who were now holding council in Paris. From that place these emissaries were sending confidential agents in all directions to promote the great object of their mission—the emancipation of the Hispano-American colonies. They had just agreed to a *projet* which they had sent to England, to be submitted to the gigantic, though youthful, minister who then lorded it over the destinies of that country.

Here is an extract from that *projet*:

“ARTICLE 4. A defensive alliance formed between Great Britain, the United States, and South America, is so recommended by the nature of things—by the geographical situation of the three countries—by the productions, wants, character, habits, and manners of the three nations—that it is not possible that it should not long continue, especially if care is used to consolidate it by an analogy in the political form of the three Governments—that is to say, by the enjoyment of civil liberty wisely conceived,” &c. &c.

General Miranda—who, up to this moment, had been opposed to any such movement on the part of the Spanish colonies—was persuaded to join in this scheme; and he immediately wrote to Mr. Hamilton, asking his co-operation and support. “It appears,” says he in one of his letters, “that the moment of our emancipation is arriving, and that the establishment of liberty on the whole American continent is confided to our care by Providence.” Here was, you will admit, Mr. President, a fair opportunity for testing the principles of neutrality laid down in the proclamation, and the doctrine of non-interference asserted in the Farewell Address, as constituting the settled and permanent policy of the country. Here is the answer of Hamilton to General Miranda:

NEW YORK, *August 22, 1798.*

\* \* \* \* \*

"The sentiments I entertain in regard to that object have been long since in your knowledge; but I could personally have no participation in it, unless patronized by the Government of this country. It was my wish that matters had been referred for a co-operation in the course of this fall on the part of this country; but that can now be scarcely the case. The winter, however, may mature the project, and an actual co-operation by the United States may take place. In this case I shall be happy in my official station to be an instrument of so good a work.

"The plan, in my opinion, ought to be, after that of Great Britain, an army of the United States—a government for the liberated Territories agreeable to both co-operators, but about which there will probably be no difficulty. To arrange the plan a competent authority to some person here from Great Britain is the best expedient. Your presence here will in this case be extremely essential. We are raising an army of 12,000 men. General Washington has resumed his station at the head of the army. I am appointed second in command.

"With esteem and regard, &c.,      A. HAMILTON."

Nor was this correspondence so mysterious as not to admit of its secret being transferred to the cabinet council of Mr. Adams, and to the foreign minister then representing this country at the court of England.

Mr. Hamilton encloses his answer to Miranda in a letter to Rufus King, in which he alludes to the disclosure which he had made in high quarters of the whole scheme. He writes thus, on the 22d of August, 1798:

"I have received several letters from Miranda. I have written an answer to some of them, which I send you to deliver or not, according to your estimate of what is passing in the scene where you are. Should you deem it expedient to suppress my letter, you may do it, and say as much as you think fit on my part, in the nature of a communication through you.

"With regard to the enterprise in question, I wish it much to be undertaken: but I should be glad that the principal agency was in the United States—they to furnish the whole land force, if necessary. The command, in this case, would very naturally fall upon me: and I hope I should disappoint no favorable anticipations. \* \* \* \*

"Are we yet ready for this undertaking? Not quite; but we ripen fast, and it may, I think, be rapidly brought to maturity, if an efficient negotiation is at once set on foot upon this ground. Great Britain cannot alone insure the accomplishment of the object. I have some time since advised certain preliminary steps to prepare the way consistently with national character and justice. I was told they would be pursued; but I am not able to say whether they have been or not."

In a subsequent letter of General Miranda to Hamilton, I find what follows:

"Your wishes are, in some degree, fulfilled, since it is here agreed (he writes from London) that the English troops shall not be employed in the land operations. The naval force shall be English, while the troops employed will be American. Every arrangement is made, and we are only waiting for the declaration of your President to depart."

I need go no further to show that the policy which Washington meant to recommend and to act upon, was, that while we should not entangle ourselves *in permanent alliances*, or implicate our interests in the *ordinary vicissitudes* and the *ordinary combinations* of the politics of Europe, while we might trust to *temporary alliances* for extraordinary emergencies, we should not, therefore, disown ourselves, and cower beneath the fear of giving umbrage by a dignified assertion of our rights under the laws of nations.

We have found him as early as 1794, not a year after the proclamation of neutrality, directing Mr. Monroe to give assurances that he was *incapable of assenting to the right of any foreign prince to meddle with the affairs of*



*other nations.* About the same time he instructs Mr. Jay to sound the ministers of Russia, Denmark, and Sweden, as to the probability of an alliance with their nations to support certain principles, and, behold! he urges the mustering of our forces at the very moment when Hamilton joins a combination through which an American army of 12,000 men is to enter Mexico, under his lead, to effect the independence of that country. Is not this policy of action a disclaimer of that other policy advocated upon this floor by the mover of the original resolutions, and by those who side with him? But we have still another example tending to subvert the entire structure built up by the advocates of the policy of impassiveness. I have shown what construction, in practice, Washington had placed upon the principles laid down in the proclamation and in the Farewell Address. His policy ended not with him. It went on, infusing itself through those who came after him. President Monroe, who had enjoyed his full confidence, who must be presumed to have imbibed his opinions and views, did not hesitate to take a bold and decisive stand, when came the crisis which threatened a coalition of certain European powers to reduce the Spanish colonies to submission, and to organize them again into monarchies. You well remember, Mr. President, that famous passage in the address which he sent to Congress in December, 1823; though the solemn declaration has fixed itself indelibly in the memories and hearts of our people, the circumstances that it brought about are comparatively but little known, and may not seem unworthy of a brief notice. Mr. Rush, a statesman of the most pure patriotism, as well as of the highest order of intellect and talent, whose lofty character has so deeply impressed itself in the diplomatic history of that

period, who exhibited in his person the rare combination of the most profound wisdom, and the most extensive knowledge, with the bland and fascinating manners, the accomplishments and polish of the gentleman, who never said a word that was improper, nor betrayed a thought that might peril his country's fortunes—Mr. Rush was minister at the court of St. James. Among the important negotiations intrusted to his management was that of obtaining from England a recognition of independence for the Spanish colonies. He approached the subject with inexpressible skill and adroitness, and soon brought the British minister to his views, by suggesting a joint declaration of the principles upon which that independence should be vindicated. The conferences which took place between him and Mr. Canning are full of a most lively interest, and pay richly the reader for the time he bestows upon their perusal. I am sure I will not seem ungracious to the Senate if I attempt to put them in possession of some remarkable passages which I have extracted from the book in which they are registered.

Alluding to (1823) a note from Mr. Canning to the British ambassador at Paris relative to a presumed design on the part of France to bring some of the Spanish possessions in America under her dominion, either by conquest or by cession from Spain, Mr. Rush had expressed the sentiment that it implied clearly that "England would not remain passive under any such attempt by France." Mr. Canning then asked Mr. Rush, "*What he thought the American government would say to going hand in hand with England in such a policy.*"—("Residence at the Court of London," p. 400.)

In the course of the same conversation Mr. Canning added that—

"The knowledge that the United States would be opposed to it as well as England could not fail to have its decisive influence in checking it."—(Ibid, p. 403.)

And in a note bearing date the 20th of August, 1823, he asks again:

"If the moment has not arrived when the two governments (England and the United States) might understand each other as to the Spanish American colonies; and if so, whether it would not be expedient for them, and for all the world, that their principles in regard to those colonies should be clearly settled and avowed; that as to England she had no disguise on the subject."—(Ibid, p. 412.)

In reply to Mr. Canning's communication, Mr. Rush declared—

"That the United States would view as unjust and improper any attempt on the part of the powers of Europe to intrench upon the independence of the Spanish possessions in America."

And in a note of August 27, he asserts

"That his Government would regard the convening of a European Congress to deliberate upon the affairs of the Spanish colonies as a measure uncalled for, and indicative of a policy *highly unfriendly to the tranquility of the world*; that it could not look with insensibility upon such an exercise of European jurisdiction over communities now exempt from it, and entitled to regulate their own concerns unmolested from abroad."—(p. 419.) "That, could England see fit to consider the time as now arrived for fully acknowledging the independence of the new communities, he (Mr. Rush) believed that not only would it accelerate the steps of this Government, but *that it would naturally place him in a new position in his further course on the whole subject.*"

"Should I be asked," writes Mr. Rush in his letter to the American Secretary of State, dated London, August 28, 1823—"Should I be asked by Mr. Canning whether, in case the recognition be made by Great Britain without more delay, *I am on my part prepared to make a declaration, in the name of my Government, that it will not remain inactive under an attack*



*upon the independence of those States by the Holy Alliance, the present determination of my judgment is, that I WILL MAKE SUCH A DECLARATION EXPLICITLY, AND AVOW IT BEFORE THE WORLD.—* (P. 421.)

Nor was Mr. Rush insensible of the importance of the step he was prepared to take. In his communication to the American Secretary of State of April 30th, of same year, he says:

*"I am fully sensible of the magnitude of the subjects to be treated of, the complicated character of the considerations involved in most of them, and of their momentous bearings, in present and future ages, upon the interests, the welfare, and the honor of the United States."* These words borrowed from the Secretary's own letter to which he was answering.—(P. 423.)

On the 15th of September Mr. Rush writes to the President:

*"That it is still his intention to urge upon Mr. Canning the immediate recognition of the new States by Great Britain as the only footing upon which he could feel warranted in acceding to the proposal made to him.—*(P. 427.)

Speaking of the declaration asked of him by Mr. Canning, he remarks:

*"The value of my declaration would depend upon its being formally made known to Europe. Would not such a step wear the appearance of the United States implicating themselves in the political connexions of Europe? Would it not be acceding, in this instance at least, to the policy of one of the great European powers, in opposition to the projects avowed by others of the first rank? This hitherto had been no part of the system of the United States. The very reverse of it had been acted upon. Their foreign policy had been essentially bottomed on the great maxim of preserving peace and harmony with all nations, without offending any, or forming entangling alliances with any. Upon the institutions as upon the dissensions of the European powers, the Government and people of the United States might form and even express*

their speculative opinions; but it had been no part of their past conduct to interfere with the one, or, being unmolested themselves, to become parties to the others. In this broad principle laid one of my difficulties under his proposal."

To this Mr. Canning would reply:

"That, however just such a policy might have been formerly, or might continue to be as a general policy, he apprehended that powerful and controlling circumstances might make it inapplicable in particular occasions," &c.

And upon the rejoinder Mr. Rush again says:

"For myself, speaking only as an individual, I could well conceive that the interposition of an authoritative voice by the United States, in favor of these communities, admitting that the powers of Europe usurped a claim to control their destinies, would imply no real departure from the principles which had hitherto regulated their foreign intercourse, or pledge them henceforth to the political connexions of the Old World. If, too, that voice happened to be in unison with the voice of Great Britain, it might prove but the more auspicious to the common object which both nations had in view, without committing either to any systematic or ulterior concert. But I added, that as the question of the United States expressing this voice, and promulgating it under official authority to the powers of Europe, was one of entire novelty as well of great magnitude in their history, it was for my Government, and not for me, to decide upon its propriety." \* \*

"Let Great Britain immediately and unequivocally acknowledge the independence of the new States. \* \* \* I will not scruple, on seeing that important event come about, to lend my official name to the course proposed, and count upon my Government stamping with its subsequent approval what I have done."—(Pp. 436, 437.)

Mr. Rush then goes on to tell us that—

"By the early transmission of the proposals made to him by Mr. Canning, in his notes of the latter end of August, the copies of them, as well as of his reports of the conferences on the whole subject, arrived at Washington in time to en-

gage the deliberations of President Monroe and his cabinet, before the meeting of Congress in December, and it was very satisfactory to him to learn that the part he had acted was approved."—(Pp. 456, 457.)

The policy of impassiveness, therefore, has no warrant in the past, and the warnings of Washington and of his compeers, so far, do not reach the ground covered by this debate. Let me define distinctly the position which I mean to occupy. I am not for entangling ourselves by permanent alliances in the ordinary vicissitudes of foreign politics, or in the ordinary combinations and collisions of foreign friendship or enmities. I am for trusting to temporary alliances in extraordinary emergencies; but I cannot be for surrendering the high rank which we are entitled to occupy at the council-board of nations. I can neither abdicate the rights which that position implies, nor disavow the obligations which it imposes; and, inasmuch as the amendment proposed by the distinguished Senator from Michigan (Mr. Cass) carries me not beyond the ground embraced in the avowals just stated, to that amendment shall I give my unqualified support and vote. It embodies my views in the guarded yet significant form of its language; it speaks out in dignified tones sentiments which respond to the throbs of every American heart, and shows that while penning its resolves the distinguished Senator had not out of mind the remark made by Washington in his message of December 3, 1793, "*that there was a rank due to the United States among nations which would be withheld, if not entirely lost, by the reputation of weakness.*"

But suppose I were in error with respect to the bearing of the Washingtonian policy, as exemplified by his own doings, the question would still remain, whether it was



ever intended it should remain an immutable rule, to be pursued by this Government under what changes soever might occur in the history of its progress.

Speaking of our commercial intercourse with foreign nations, Washington himself, in his Farewell Address, recommends the "*establishment of certain conventional rules, the best that present circumstances and mutual opinions will permit, but temporary, and liable to be from time to time abandoned or varied, as experience and circumstances shall dictate.*"

Our policy, upon the same principle, must also change. It is not in the power of man to impart immutability to any of its works. Our policy must change; it will change. Who is the statesman, where is the statesman, who will consider himself so constrained by the traditions of the past as to admit that it should bind the present in shackles, and keep the future in thralldom? Sir, we cannot thus be enslaved to the opinions and judgments of those who have preceded us. Are we the nation we were in 1793? Does Europe stand to us in the relation it then stood? Consider: We were but three millions of people then; we are now twenty-three millions. The area of our territory exceeded hardly eight hundred thousand square miles; it now measures upwards of three millions. Our commercial relations with the whole world embraced an aggregate of one hundred and fifteen millions of dollars; they reach now to upwards of three hundred and eighteen millions; on a comparative survey of the commercial progress of this country and of England we find that, while the mercantile movement of the United States in half a century has increased in the ratio of three hundred per cent., that of England has only attained two hundred per cent. Taking for granted that the

two countries will progress in the same ratio during the coming century, we find that in 1890 the commerce of the United States will be eight hundred and seventy millions, that of England twelve hundred millions; and in 1940 the commerce of the United States will be twenty-three hundred and seventy-seven millions, while that of England will only be twenty-two hundred and eighty-nine millions—thus leaving the United States with a surplus over England of eighty-eight millions.

We have now a seacoast extending 5,620 miles in length; it extended in 1793 but 1,700 miles. We had scarcely a commercial marine; now our steam force alone amounts to upwards of fourteen hundred steamers, measuring 417,283 tons; while the whole steam marine of all Europe in 1848 did not exceed twelve hundred and twenty-four steamers, of 164,713 tons burden.

To insist, sir, that while our numbers, the extent of our territory, our commerce, and our shipping, have so much changed, our interests, our wants, our rights, our obligations under those rights, should remain what they were sixty-five years ago, is to scorn the teaching of our judgment, and to belie the wisdom of God.

But it is said that we should have no concern with interests connected with European policy, and that we should confine ourselves to extending our commercial relations with foreign countries without ever entangling ourselves in their politics—aye, sir, if we can so separate those relations as to keep them in absolute freedom of each other; but this is not in our power to effect. Commercial intercourse will, and must of necessity, beget political entanglements. The question is not how you may avoid them—they will defy your prudence, and put in default all your diplomacy—but the question is, how will you meet them with the least possible danger to

your peace and your prosperity; you could not, if you would, disconnect yourselves at this day from Spain, England, or Russia. There they stand nailed to your sides. Suppose for a moment that Spain chooses to transfer Cuba to a foreign government, would we stand still? Suppose England were to exercise somewhat more ostensibly than she does at present her dictatorship over the Central American republics, would you stand still? Suppose Russia should re-issue her ukase of 1821, and so extend the circle of prohibition, which she had the boldness to draw around herself, as to exclude you entirely from the northern waters of the Pacific, would you stand still? No, sir; you would not—you could not. Again, sir: suppose England were induced to join a European coalition, and become a party to another *continental system*, can you realize what advantages Europe could tender her that would not be ruinous to your interests? Might not, perchance, a new Pozzo de Borgo instil into the brains of some raving autocrat the thought, by him suggested in 1817, of subjugating these States, in order to protect the world against the poisonous effects of their institutions?\*

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\*A SINGULAR HISTORICAL FACT.—The New York Express, brings to light a singular historical fact which is not generally known. It says that, in 1817, a Russian of eminence, M. Pozzo de Borgo, being then in Paris, proposed in a memoir, addressed to his court on the importance of replacing South America under the dominion of Spain, that the United States should be subjugated. He said that, “founded on the sovereignty of the people, the Republic of the United States of America was a fire, of which the daily contact with Europe threatened the latter with conflagration; that as an asylum for all innovators it gave them the means of disseminating at a distance, by their writings, and by the authority of their ex-



I repeat it again, you have no power either to surrender your rights or to disown your obligations. Assert your rights and fulfil your obligations. Let the world know that while you are prepared to comply with the latter, you cannot suffer the former to be questioned or invaded. But some will say: this is war! Not quite. And if it were, I could not see that we ought on that account abstain from asserting what is good and just in itself. Know you not, sir, that moral power, in time of war as well as in time of peace, acts the first part, and often coerces the power of numbers to unconditional surrender? Let me read you from Heffter a few lines, which define more accurately, than any thing I have yet read, the origin, the sanction, and the imposing commands of the law of nations:

"The law of nations has neither lawgiver nor supreme judge, since independent States acknowledge no superior human authority. Its organ and regulator is public opinion. Its supreme tribunal is history, which forms at once the rampart of justice and the Nemesis by which injustice is avenged. Its sanction, or the obligation of all men to respect it, results from the moral order of the universe, which will not suffer nations and individuals to be isolated from each other, but constantly tends to unite the whole family of mankind in one great harmonious society."

ample, a poison of which the communication could not be questioned, as it was well known that the French revolution had its origin in the United States; that already troublesome effects were felt from the presence of the French refugees in the United States." The Russian ambassador went on to state and argue that the conquest of the United States was an easy enterprise; that the degree of power to which the Americans had risen made them objects of fear to the European monarchical governments, &c. The editor of the Express came in contact with this curious paper in the State Library at Albany, in an old file of the Missouri Republican, printed more than thirty years ago.

What! speak you of isolation? Have you not markets to retain for your present excess of production, and markets to secure for the surplus of your future wealth? Can you rely on the sympathies of Princes, Kings, or Czars, for a continuance of those relations which alone can enable you to retain the advantages which you enjoy on the old continent? Disown not yourself. Be not unmindful that you are a member of the great family of nations. Do not repudiate the relations which that membership implies. The law that binds nations to each other is your law as well as theirs. Let it not be violated with impunity. That law rests on the dictates of public opinion. Will you give up your share in forming it? In vain seek you to remain isolated. The tendencies of your political organization, your commercial as well as your social interests, that thirst after the unknown, which you can neither compress nor satisfy, will throw you forcibly into contact with foreign powers. What their policy may induce them to attempt against your commerce, will not cease to be a political aggression, though it should affect only your mercantile interest. With the progressive ratio of your production compared with your population, you may have in 1,900 an excess of seven hundred millions in your produce. Where will you find a market for it? In the East!—in the East! There you must look to for custom—thither 750,000,000 of consumers invite your commodities and your excess of wealth. The dependence of England on your great staple for the supply of her extensive manufactories, may counsel her to take you into partnership in the enjoyment of the gorgeous boon. But should Russia gain the ascendancy there, what would your prospects be? Her policy is essentially exclusive, antagonistic

to your interest. Suppose she lays hands on Turkey, and shuts you out of the Mediterranean: might not this great basin become again the great reservoir and entrepot of Eastern commerce? You see then, sir, that interest alone presses you on all sides not to remain isolated. In self-defence you are bound to watch every movement of European policy. See how strangely have fallen those Balkans which wise and far-seeing statesmen had raised in the combined strength of Hungary and Austria against the devouring ambition of the Cossack! Austria, now a Russian province, is but a relay to the Czar on his route to Turkey. He can now approach Constantinople by Vienna as surely as by Bucharest.

It may be too late for us to interpose a protest against an accomplished wrong; it is never too late to provide against its recurrence. Do not late events speak loud of the future? See you not England herself succumbing to the continental coalition? How anxious she seems not to give offence to European despots! Mark her condescensions to their biddings. On the very day that Lord Palmerston was surrendering his seals, Vienna was revelling in joy and exultation at the triumph which the anticipated fall of that minister prepared to Austria. Lord Malmesbury bends in humble compliance to the remonstrances of France and Austria, and narrows the circle of the liberties conceded to European exiles; and Lord Derby inaugurates his advent to power by withdrawing the bill which extended the electoral franchises of the British subjects; and thus is England belying her past, as if she no longer recollected those proud days of her glory when her minister could exclaim in the House of Commons, "We go to plant the standard of England on the well-known



heights of Lisbon; where that standard is planted foreign dominion shall not come;" or, when hurling defiance at France, then in possession of Spain, the same minister triumphantly avowed his resolution, "that if France had Spain, it should not be Spain with the Indies; that he had called the New World into existence to redress the balance of the Old." But, sir, while she shows herself so submissive to European despotism, see how menacingly she rides our waters, and how arrogantly she deals out her protectorate to Nicaragua, Costa Rica, and the kingdom of Mosquito. Even this wavering and irresolute administration of ours could not but speak out high words of complaint—nay, sir, the very words of the amendment introduced by the Senator from Michigan, to remonstrate against the untoward assumption. But, the complaint was soon stilled by empty excuses in one case, and in the other by the reassertion of the very right and power denied and protested against. The Senate will recollect what occurred upon the appearance of the French and British squadrons in the Gulf of Mexico. A conference took place on that occasion between the acting Secretary of State and Mr. Crampton, then British charge d'affaires to this Government, and a correspondence was had between the same acting Secretary and the French minister, in both of which our Government asserted *its deep concern* at the unlooked-for interference, and insisted upon obtaining satisfactory explanations. The French minister, with a frankness and in a tone which do great credit to his character, and yet with that dignified reserve that behooved the representative of a great nation, met the question in perfect fairness, and declared, "first, that the instructions issued by the Government of the republic were spontaneous and iso-

lated; secondly, that those instructions were exclusive, for an exclusive case, and applicable only to the class, and not to the nationality, of any pirate or adventurer that should attempt to land in arms on the shores of a friendly nation."

The answer was conclusive, and this government deemed it satisfactory. But how was it with the British charge d'affaires? The memorandum of the conference informs us that "Mr. Crampton, at an interview with Mr. Crittenden at the Department of State, on the 27th of September, 1851, stated *that he had been directed by her Majesty's government to say to the United States Secretary of State that her Majesty's government had learned, WITH DEEP REGRET, that expeditions have again been prepared in the ports of the United States for an attack upon a territory belonging to a sovereign at peace with the United States and in friendly relations with her Majesty.*" \* \* \* \*

"That her Majesty's Government deem it due to the frankness which ought to characterize the intercourse between the two Governments to state to that of the United States, THAT HER MAJESTY'S SHIPS-OF-WAR ON THE WEST INDIA STATION WILL HAVE ORDERS TO PREVENT BY FORCE ANY ADVENTURERS, OF ANY NATION, FROM LANDING WITH HOSTILE INTENT UPON THE ISLAND OF CUBA." I had thought, sir, that, under the prevalence of this doctrine of non-intervention, the illustrious statesman who is at the head of the State Department, with that tone of voice that bespeaks the depths of his thoughts, though not always the invincible energy of his will, might have gravely told the British Charge: "Sir, this is no concern of yours. Withdraw your ships. We can minister for ourselves the police of our affairs over our own waters." But I am mistaken, I think; it

was not Mr. Webster, but Mr. Crittenden, who then occupied the chair of State. And very strenuously does he retort, "*That the President could not, WITHOUT CONCERN, witness any attempt to accomplish the object*" in contemplation of the British Government "*by means which might eventually lead to encroachments on the rights of the people of the United States ;*" that "the execution of the orders received by her Majesty's squadron would be the exercise of a sort of police over the seas in our immediate vicinity, covered as they are with our ships and our citizens ; and it would involve, moreover, to some extent, the exercise of a jurisdiction to determine what expeditions were of the character denounced, as well as who were the guilty adventurers engaged in them ;" and he closed by expressing "the hope that there may never arise any occasion for carrying any such orders into execution." What answer, Mr. President, do you suppose Mr. Crampton made to the State Department ? Here is the communication he addresses to Mr. Webster on the 12th of November. It encloses a letter to himself from Lord Palmerston, reasserting, as I have already said, the very right and assumption of power complained of and protested against.

BRITISH LEGATION, WASHINGTON, *November 12, 1851.*

SIR: With reference to our conversation on the 10th inst., and in compliance with your desire, I have the honor to enclose a copy of the despatch addressed to me by Lord Palmerston, which I then read to you, upon the subject of the orders issued to her Majesty's ships-of-war on the West Indian station, respecting unauthorized expeditions against the Island of Cuba.

I avail myself of this opportunity to renew to you, sir, the assurance of my highest consideration,

HON. D. WEBSTER, &c., &c.

JOHN F. CRAMPTON.



[No. 16.]

FOREIGN OFFICE, October 22, 1851.

SIR: I have received your despatch No. 29, of the 6th instant, and I have to acquaint you that *her Majesty's Government approves the course pursued by you in communicating to the Government of the United States the orders issued by her Majesty's Government to the Commander-in-chief of her Majesty's ships in the West Indies, respecting the prevention of lawless expeditions against Cuba.*

If you should have any further conversation with the Secretary of State of the United States on this subject, you may assure him that every care will be taken that, *in executing these preventive measures against the expeditions of persons whom the United States Government itself has denounced as not being entitled to the protection of any government, no interference shall take place with the lawful commerce of any nation.*

I am, &amp;c.,

PALMERSTON.

JOHN F. CRAMPTON, Esq., &amp;c., &amp;c., &amp;c.

Here is, then, on the part of England, the assumption of the right not only to exercise her police over our waters and over vessels sailing under American colors, but to decide for herself of the nature and character of an expedition departing from our shores; for, the squadron "*has orders to prevent by force, any adventurers of ANY NATION from landing, with hostile intent,*" upon the island of Cuba! Has reparation been yet demanded of the insult thus offered to the majesty of the American flag? Has the minister of England apologized for the unceremonious evasion with which the charge d'affaires escaped the necessity of a committing answer? The accomplished and skilful gentleman who now represents Great Britain near this Republic would be loth to admit that his Government had transcended its privileges, or might, under any circumstances, surrender the exercise of its assumed rights. Here was, you will admit, Mr. President, a fit opportunity for this

Administration to display some of that watchful energy which it so mercilessly exhibited on a kindred occasion. Why is it that it suffered its wrath to be so easily soothed and its susceptibilities to slumber? What business had it to be thus tolerant and accommodating when it had pursued, with such an unrelenting severity and rancor that little band of deluded, but brave and chivalrous men who had engaged in that unfortunate and ill-advised expedition which ended so miserably at Baya Honda? Was it love for non-intervention that prompted the policy which branded the invasion with deadly names, and doomed the invaders to an ignominious slaughter? Sir, I disapproved then, as I disapprove now, the reckless undertaking; but those who engaged in it had stout and noble hearts; they were enthusiasts—maniacs, if you choose—but enthusiasts maddened by the most disinterested and the most lofty aspirations. What right had this Administration to track them through the waters of the Gulf, beyond the line of our municipal jurisdiction? Will its friends show me where, in the constitution, is lodged the power which the President thought proper to exert on that occasion? And, as if the butchery made of fifty of our citizens, slaughtered in full daylight, within view of our flag waving sadly over our ships-of-war, and in wanton violation of the most solemn and the most explicit treaty stipulations, was not enough to satisfy the most extravagant exactions of Castilian pride, Castilian punctilio, and Castilian revenge, we are driven to witness, in the great metropolis of the South, the heart-rending spectacle of a salute booming out to exulting Spain, repentance and atonement in the name of the United States of America! The triumph won by the Spanish minister on this occasion over the susceptibilities, once

so keen, of our statesmen, has no precedent in the annals of the diplomatic history of any nation.

But to return to the present aspect of affairs in Europe, and to the new attitude in which England stands to the continental powers;—Believe you, sir, that she would now be so humble, so dejected, so submissive to Austro-Russian dictation, if she had firmly stood up by those principles which her Chathams and her Cannings had so proudly proclaimed to the world? How dearly she pays for her impassiveness, while the Roman Republic was fattening under French bayonets, while Hungary was slaughtered by Russian sabres, and while Cracow laid prostrate at the feet of her plunderers.

Sir, let us not be lulled into slumber by the idea that we are too distant from Europe to be affected by her political convulsions. Know you not that violence and oppression are contagious, and that their triumph, in any point of time, or on any point of the globe, reacts on the moral world?

What, Mr. President, speak of isolation, when you can ride your floating palaces from continent to continent in less time than it took your fathers, fifty years ago, to travel from Buffalo to New York—from Boston to Philadelphia!—when every wave of the ocean brings you swift messengers, blown over to these western shores by the same breeze that wafted them away from the eastern hemisphere?—when, low as it beats, you can hear every pulsation of the European heart beneath the iron hands that strive to compress and stifle its languid and agonizing energies?

But it is insisted that an expression of our sympathies is more a matter of sentiment than of right and policy. Ah, sir, I pity the statesman who does not know that public sentiment, which sometimes supplies



and sometimes corrects the law, is always its strongest support.

Sir, believe me, it is our interest, and if not our interest, our duty, to keep alive, by good offices among the nations of Europe, that reverence for the institutions of our country, that devout faith in their efficacy, which looks to their promulgation throughout the world as to the great millennium which is to close the long calendar of their wrongs. Let their flame light up the gloom and dispel the darkness that now envelop them. Humbled though they be, despise them not. It was not their choice, but treachery that made them slaves; and if you should ask why is it they seem to look with approving smiles and contented hearts to the hands that brandish the rod over them, forget not those deluded wretches destined to the beasts, for the entertainment of the Roman Emperors, who could not be persuaded that Cæsar was not Rome; and who, upon entering the Coliseum, as they passed his seat, would bow to him, in respectful submission, and exclaim: "*Cæsar, morituri te salutant*"—Cæsar, though doomed to die, we salute you.

I heard, the other day, the honorable Senator from Tennessee, in one of those soul-stirring feats of eloquence so peculiarly his own, disclaim that there be anything like destiny in the callings of a nation. How could he have thus overlooked that there is not a work of God's wisdom, nor a striving of the human intellect, that bears not the indelible seal of destiny? Onward! onward! is the injunction of God's will, as much as *Ahead! ahead!* is the aspiration of every American heart. We boast exultingly of our wisdom. Do we mean to hide it under the bushel, from fear that its light would set the world in flames? As well might

Christianity have been confined to the walls of a church or to the enclosures of a cloister. What had it effected for mankind, what had it effected for itself, without the spirit that promulged it to the world? Onward! onward!! To stand still is to lie lifeless—inertia is death. Had Mahomet stood still, would he and the mountain have got together? Had the colonies stood still, would this be the Government it is? Had Jefferson and Polk stood still, would Louisiana be ours? Would Texas, would California, sit here in the bright garments of their sovereignty?

You commend the policy of the fathers of the republic as if time, that withers the strength of man, did not “throw around him the ruins of his proudest monuments.” Have I not shown how mutable it had been? Let us not calumniate the past by fastening its usurpations upon the future. I revere its teachings, but cannot submit to make them the measure of present wisdom. Speaking of the sages whose names and authority have so often been invoked in this debate, the elder Adams attempts to exculpate the narrowness of their views and policy by this remark: “The present actors on the stage have been too little prepared by their early views, and too much occupied with turbulent scenes, to do more than they have done.” And with what ardent fervor and hope, with what enthusiasm, he speaks of the scenes which display themselves to his view in the future of his country! “A prospect into futurity in America is like contemplating the heavens through the telescope of Herschel. Objects stupendous in their magnitude and motions strike us from all quarters and fill us with amazement!”

My reverence for opinions consecrated by the authority of the sages who preceded us will not induce me to

disintegrate this republic, and shear from its domain Louisiana, Texas, Florida, the Californias, and New Mexico, because, forsooth, Washington, Adams, and Hamilton may have held that any accession of new territory to the area embraced by the old States was unconstitutional. I could not give a vote for the re-chartering of a national bank because its institution had the assent of the same great men. Nor could I shut my ears, on their account, to those whisperings of the future that betoken the rising of new generations impatient to throw themselves on our lap. Sir, I have a mind to place before you the record of strange prophecies made on the future growth, strength, prosperity, and empire of these States, at a time when they were but dependent and subordinate colonies of a distant nation. They are to be found spread over in the memorials of Mr. Pownall, who lived eight years in the colonies, from 1753 to 1756, who held successively the offices of Lieutenant Governor of New Jersey, of Governor of Massachusetts, and of Governor of South Carolina, and who in those three capacities must be presumed to have been afforded every opportunity that could enable him well to appreciate in the people that surrounded him that peculiar forwardness and energy of purpose which have since realized so wonderfully what that great and wise man had contemplated in vision, through the telescope of his far-seeing mind. Sir, I feel assured that the Senate will thank me for trespassing yet a moment upon its patience, while I shall read some of his most striking revelations :

“North America has advanced, and is every day advancing, to growth of State, with a steady and continually accelerating motion, of which there has never yet been any example in Europe.” \* \* \* \* \*



"It is young and strong." \* \* \* "Its strength will grow with its years, and it will establish its constitution and perfect adulthood in growth of State. To this greatness of empire it will certainly arise." \* \* \* "America will become the arbitress of the commercial world, and perhaps the mediatrix of peace, and of *the political business of the world.*"

"Whoever knows these people will consider them as animated, in this new world, if I may so express it, *with the spirit of the new philosophy.*"

"Here one sees the inhabitants laboring after the plough, or with the spade and hoe, as though they had not an idea beyond the ground they dwell upon; yet is their mind all the while enlarging all its powers, and their spirit rises as their improvements advance."

"The independence of America is fixed as fate. She is mistress of her own fortune; knows that she is so, and will actuate that power which she feels, both so as to establish her own system *and to change the system of Europe.*"

"Those sovereigns of Europe who have been led by the office system and worldly wisdom of their ministers—who, seeing things in those lights, have despised the unfashioned, awkward youth of America—when they shall find the system of this new empire *not only obstructing but superceding the old systems of Europe*, and crossing upon the effects of all their settled maxims and accustomed measures, they will call upon these their ministers and wise men, '*Come, curse me this people, for they are too mighty for me;*' their statesmen will be dumb; but the spirit of truth will answer, '*How shall I curse whom God hath not cursed?*'"

"America will come to market in its own shipping, and will claim the ocean as common—will claim a navigation restrained by no laws but the law of nations, reformed as the rising crisis requires."

"America will seem every day to approach nearer and nearer to Europe. When the alarm which the idea of going to a strange and distant county gives to the homely notions of a European manufacturer or peasant shall be thus worn out, a thousand repeated repulsive feelings respecting their present home, a thousand attractive motives respecting the settle-

ment which they will look to in America, will raise a spirit of adventure, and become the irresistible cause of an 'almost *general emigration to that new world.*'"

"Whether the islands in those parts called the West Indies are naturally parts of this North American communion, is a question, in the detail of it, of curious speculation, but of no doubt as to the fact."

Then, giving way to the enthusiasm of his prophetic spirit, he addresses himself in direct language to America:

"A nation to whom all nations will come; a power whom all powers of Europe will court to civil and commercial alliances; a people to whom the remnants of all ruined people will fly; whom the oppressed and injured of every nation will seek for refuge," he exclaims, "ACTUATE YOUR SOVEREIGNTY, EXERCISE THE POWERS AND DUTIES OF YOUR THRONE."

Arise! ascend thy lofty seat,

Be clothed with thy strength—

Lift up on high a standard to the nations!!!

MR. CASS. He was an old foggy after my own heart.

MR. SOULE. And I rejoice that yours is a heart as stout and comprehensive as his.

Sir, public opinion has already responded to that mighty appeal from the past. It scorns the presumptuous thought, that you can restrain this now grown country within the narrow sphere of action assigned to its nascent energies, and keep it eternally bound up in swaddles. As the infant grows, it will require more substantial nourishment; more active exercise. The lusty appetites of its manhood would ill fare with what might satisfy the sober demands of a younger age. Attempt not, therefore, to stop it in its onward career, attempt it not; for as well might you command the sun not to break through the fleecy clouds that herald its advent on the horizon, or to shroud itself in gloom and darkness as it ascends the meridian.





## APPENDIX.

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The following original letter from General Washington to Mr. Madison, was introduced by Mr. Soule in the course of his speech, in illustration of one of the points he made, to the effect that the policy attributed to Washington was not among the suggestions which he submitted to Mr. Madison when he requested him to prepare a form for his Farewell Address.

MOUNT VERNON, *May* 20, 1792.

MY DEAR SIR: As there is a possibility, if not a probability, that I shall not see you on your return home; or, if I should see you, it may be on the road and under circumstances which will prevent my speaking to you on the subject we last conversed upon, I take the liberty of committing to paper the following thoughts and requests: I have not been unmindful of the sentiments expressed by you in the conversation just alluded to. On the contrary, I have again and again revolved them, with thoughtful anxiety, but without being able to dispose my mind to a longer continuance in the office I have yet the honor to hold. I therefore still look forward to the fulfillment of my fondest and most ardent wishes, to spend the remainder of my days (which I cannot expect will be many) in ease and tranquillity. Nothing short of conviction that my dereliction of the Chair of Government (if it should be the desire of the people to continue me in it) would involve the country in serious disputes respecting the Chief Magistrate, and the disagreeable consequences which might result therefrom, in the floating and divided opinions which so prevail at present, could in no wise induce me to relinquish the determination I have formed; and of this I do not see how any evidence can be obtained previous to the election. My vanity, I am sure, is not of that cast, as to allow me to view the subject in this light. Under these impressions then, permit me to reiterate the request I made to you at our last meeting, namely: To think of the proper time and the best mode of announc-

ing the intention, and that you would prepare the latter. In revolving this subject myself my judgment has always been embarrassed. On the one hand, a previous declaration to retire, not only carries with it the appearance of vanity and self-importance ; but it may be construed into a manœuvre to be invited to remain. And on the other hand, to say nothing implies consent, or at any rate would leave the matter in doubt ; and to decline afterwards might be deemed as bad and uncandid. I would fain carry my request to you farther than is asked above. Although I am sensible that your compliance with it must add to your trouble ; but as the recess may afford you leisure, and I flatter myself you have disposition to oblige me, I will, without apology, desire (if the measure in itself should strike you as proper and likely to produce public good or private honor) that you would turn your thoughts to a valedictory address for me to the public, expressing in plain and modest terms, that having been honored with the presidential chair, and to the best of my abilities, contributed to the organization and administration of the government ; that having arrived at a period of life when the private walks of it, in the shade of retirement, becomes necessary and will be most pleasant to me, and the spirit of the Government may render a rotation in the elective officers of it, more congenial with their ideas of liberty and safety ; that I take my leave of them as a public man, and in bidding them adieu, (retaining no other concern than such as will arise from fervent wishes for the prosperity of my country,) I take the liberty at my departure from civil, as I formerly did at my military exit, to invoke a continuance of the blessings of Providence upon it, and upon all those who are the supporters of its interests, and the promoters of harmony, order, and good government.

That to impress these things, it might among other things be observed, that we are *all* the children of the same country—a country great and rich in itself—capable, and promising to be as happy as any the annals of history have ever brought to our view. That our interests, however diversified in local and smaller matters, is the same in all the great and essential concerns of the nation. That the contrast of our country, the diversity of our climate and soil, and the various productions

of the States, consequent of both, are such as to make one part not only convenient, but perhaps indispensably necessary to the other part, and may render the whole (at no distant period) one of the most independent in the world. That the established government being the work of our own hands, with the seeds of amendment engrafted in the Constitution, may, by wisdom, good dispositions and mutual allowances, aided by experience, bring it as near to perfection as any human institution ever approximated; and, therefore, the only strife among us ought to be: who should be foremost in facilitating and finally accomplishing such great desirable objects, by giving every possible support and cement to the Union. That however necessary it may be to keep a watchful eye over public servants and public measures, yet there ought to be limits to it; for suspicions unfounded, and jealousies too lively, are irritating to honest feelings, and oftentimes are productive of more evil than good.

To enumerate the various subjects which might be introduced into such an Address would require thought, and to mention them to you would be unnecessary, as your own judgment will comprehend *all* that will be proper. Whether to touch specially any of the exceptionable parts of the Constitution may be doubted; all I shall add therefore at present, is to beg the favor of you to consider—

1st. The propriety of such an Address;

2d. If approved, the several matters which ought to be contained in it; and

3d. The time it should appear—that is, whether at the declaration of my intention to withdraw from the service of the public, or to let it be the closing act of my administration, which will end with the next session of Congress, (the probability being that that body will continue setting until March,) when the House of Representatives will also dissolve.

Though I do not wish to hurry you (the cases not pressing) in the execution of either of the publications before mentioned, yet I should be glad to hear from you, generally, on both, and to receive them in time, if you should not come to



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Philadelphia until the session commences, in the form they are to take.

I beg leave to draw your attention also to such things as you shall conceive fit subjects for communication on that occasion, and noting them as they occur, that you would be so good as to furnish me with them in time to be prepared, and be engrafted with others for the opening of the session.

With very sincere and affectionate regard, I am ever yours,

G. WASHINGTON.

JAMES MADISON, Jr., Esq.











# SPEECH

OF

## MR. SOULE, OF LOUISIANA, ON NON-INTERVENTION.

DELIVERED IN THE SENATE OF THE UNITED STATES, MARCH 22, 1852.

Mr. CLARKE's resolutions, and the amendments moved to the same by Senators SEWARD, of New York, and CASS, of Michigan, being under consideration—

Mr. SOULE, of Louisiana, who had previously obtained possession of the floor, rose and said:

I am appalled, Mr. President, by the vast and imposing assemblage which I see congregated in this hall. I fear much, sir, that the announcement, so flatteringly made by some newspapers, of the part which it was presumed I would take in this contest, has raised expectations which it will not be in my power to gratify; and the anxiety, the distrust, and torment, which such an apprehension is so well calculated to engender, are not a little augmented by the awful magnitude and the difficulties of the subject before me. However, sir, I have no wish to avoid the task. It were too late for me now to disown its claims or to repudiate its exigencies. I will proceed with it, tremblingly, yet with some faint hope that I may still be able to bear its burden in a manner not altogether unbecoming the dignity of an American Senator.

Whatever be the fate that awaits the resolutions upon your table, Mr. President, the debate which has grown out of them will have its influence and bear its fruits. I rejoice that it has afforded us a fit opportunity for proclaiming to the world our abiding faith in the rectitude and ultimate triumph of those great principles on which rest the hopes and the destinies of mankind. We are heard at a great distance when we speak from the high places which we occupy here. What of hope and encouragement, what of interest and sympathy we express for down-trodden and oppressed nations is echoed throughout the remotest regions of the world; and while we give utterance to the thought, it runs swiftly on the magic wire, until it moves to congenial and harmonious vibration every fibre of the human heart.

I have no conception that there is so glaring a discrepancy in the sentiments entertained by those Senators who first moved in this debate. What of disagreement I have been able to discern among them, would seem to arise, rather from a misconstruction of the object aimed at by each respectively, than from any real antipathy in their opinions as to what principles we should assert and vindicate here. Though the original resolutions may have been intended (as I have no doubt they were) as a sort of political breakwater, thrown up to compress and still those surges of the popular sentiment to which I took occasion some time ago to allude—though they seem to advocate impassiveness, absolute impassiveness, as the only policy under which we can grow and prosper—yet a discerning eye will not fail to detect that feverish and restless anxiety, the offspring of a keen and unerring foresight, which betrays itself through the dubious, misty, timid, I had almost said bashful admission contained in the last of them, of a possible contingency on the occasion of which “a just regard to our own safety will require us to advance to the conflict rather than await the approach of the foes of constitutional freedom and of human liberty.”

The policy so solemnly commended, and so skilfully developed in the remarkable speech by which the Senator from Rhode Island (Mr. CLARKE) opened



this debate, is here held under check by the express reservation and protest that it may come to its last day, and be superseded by another that *will require us to advance*—mark the word!—*to advance to the conflict, and to fight for constitutional freedom and for human liberty.*

But, much to my wonder, and still more to my deep concern, that contingency, so strikingly pointed at in the resolutions, was entirely overlooked in the speech, where it is not even alluded to. Sir, I had determined that it should not remain unheeded, and I now plead its implied concessions in vindication of the views which I propose to lay before the Senate.

I am decidedly against this country being pent up within the narrow circle drawn around it by the advocates of the policy of impassiveness. Escorted though it comes to us by the authority and imposing names of men deservedly honored in our history, that policy has no claims to my sympathies—it is set forth in antagonism to the policy by which the statesmen of the progressive school attempt to initiate, as it is said, a system of interference with the affairs of other nations; the first finds security in inertness; the second, in action. One, under that infatuation which a long series of successes is so apt to produce, points to the past, and credits them all to a system of measures which but prefaced their history; the other invokes the very state of things which those successes have brought about, and, obeying the dictates of new exigencies, strives to turn to profit the solemn warning “*non iisdem artibus, retinentur quibus comparantur.*” I am for the last; and, while vindicating its expediency, I shall attempt to show that the opposed policy cannot claim the support which it so freely borrows from the doctrines and teachings of the immortal sages under whose protection it shelters itself. Sir, the policy of Washington, as elucidated by his own acts, was by no means that unimpassioned, phlegmatic, cautious, and inactive policy which our opponents would induce us to believe; but, on the contrary, a watchful, sharp, and active policy, ready to interpose wherever and whenever a great interest or a great principle was at stake, and disdaining that submissive wisdom which could abide the most revolting assumptions on the part of foreign powers, from the moment that they did not affect too ostensibly the immediate concerns of the republic.

Through a most strange confusion, the presumed principles implied in the proclamation of neutrality in 1793 are made the ground-work—nay, the very foundation—of those proclaimed in the Farewell Address of the revered patriot and hero; yet who knows not that the neutrality adopted in 1793 was but an essentially transient measure, looking solely to the existing situation of the country, and to the demands which that situation, with its surrounding perils, made upon it?—that it was considered in no other light by General Washington himself is most unequivocally exhibited from the fact that, alluding to this very subject in his Farewell Address, he speaks of it thus: “The period is not far off when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be respected,” &c. And this is not the only evidence of the meaning which he intended that the proclamation should convey. It came to be debated in cabinet council how far, in issuing that proclamation, General Washington had not transcended the powers vested in the President by the Constitution; and we have the authority of Mr. Jefferson to the effect that “*he apologized for the use of the term NEUTRALITY.*” “The President,” remarks Mr. Jefferson, “declared he never had an idea that he could bind Congress against declaring war, or that anything contained in his proclamation could look beyond the day of their meeting.” \* \* \* The President said “he had but one object—the keeping our people quiet till Congress should meet.”

Sir, the circumstances under which the neutrality of 1793 was resolved upon are of sufficient interest, I should imagine, to deserve a passing notice, and to command attention, for a few moments at least, on the part of the Senate.

We were just emerging from that sea of agitation which had been stirred up by the recent remodelling of the national government, with a treasury exhausted by the incessant demands that were every day made upon it; to satisfy the ob-

ligations incurred during a protracted and expensive war. We were unsettled, restless; doubtful whether the new experiment would realize the hopes of those who had advised and attempted it. A war had just broken out between France and England—I should say, between France and coalized Europe;—France alone struggling for her liberties and the liberties of mankind against the world in arms. The question arose what part America should act in that awful conflict. Would she redeem those pledges which ardent and enthusiastic minds had persuaded themselves she was under, and, taking the part of France, strike by her side for the liberties of the world? She could not join England in a crusade against those liberties. Would she, then, participate in the struggle, or would she rather remain a quiet spectator of the gigantic scene, and trust to God the destinies of her ally? Necessity—stern, inflexible necessity—could alone impel her to choose the last alternative.

“This was,” says Lyman in his *American Diplomacy*, “an extraordinary period; France had now become professedly a republic, and was threatened with annihilation by a European coalition, at the head of which was England.” “The distance of America from Europe—the youth and peculiarity of her government, at that time little understood, and certainly far from being confirmed—the narrowness of her resources—the entire absence of every species of armament—powerfully combined to point out the course she should adopt.” And, now, how curious it is to see what little that proclamation of neutrality did realize for America. It was issued in April, 1793. In the summer following, Great Britain, Russia, Spain, Prussia, and the empire of Germany entered into treaty, for the purpose, among other things, “of closing their ports and prohibiting the exportation of naval stores, corn, grain, and provisions, from their ports to the ports of France.” They also engaged “to take all other measures in their power for injuring the commerce of France,” and to unite all their efforts “to prevent other powers not implicated in the war from giving any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or property of the French on the sea or in the ports of France.” You well know, Mr. President, that in the celebrated treaty of Utrecht between France and England, even naval stores were declared “free of war;” and you know also that there are treaties on record between England and the United Provinces in 1645, with France in 1667 and 1668, with Spain in 1713, with Denmark in 1782, and with Russia in 1804, in which *provisions* are by name *excluded from the list of contraband*. Shall I say anything of the insults, wrongs, outrages, offered by England to America under the neutrality policy? Why, sir, they were such as to force upon us within less than a year the necessity of sending a special embassy to the court of St. James, to plead redress for past offences, and, at all events, to obtain security that our rights, under the neutrality, should be in future recognised and respected.

The alarm of the country—its sufferings, its impatience, and irritation—may well be judged from the intimations which our minister was directed to give of them in England. Says our Secretary of State, in his instructions to Mr. Jay, 1794: “You will keep alive in the mind of the British minister that opinion which the solemnity of a special mission must naturally inspire of the *strong agitations* excited in the people of the United States by the *disturbed* condition between them and Great Britain.” \* \* \* \* \* “You will mention, with *due stress*, the *general irritation* of the United States, at the  *vexations, spoliations, captures,*” &c., &c.

Such was the situation in which the United States found themselves in the year 1794, hardly ten months after the issuing of the famous proclamation. Mr. Jay succeeded in effecting a treaty. What that treaty secured to the United States is what I propose now to investigate. His instructions were explicit. The anxiety of the United States to see those principles acknowledged which alone could render our neutrality available was extreme. What did the treaty end in? Turn first to the instructions under which Mr. Jay was directed to act. He was to listen to the suggestions of a commercial treaty, and to keep in view, amongst other objects, the following:



1st. Reciprocity in navigation, particularly to the West Indies, and even to the East Indies.

2d. Free ships to make free goods.

3d. Proper security for the safety of neutral commerce in other respects, and particularly by declaring provisions never to be contraband, except in the strongest possible case; by defining a blockade; by restricting the opportunities of vexation in visiting vessels.

And what did the treaty allow? Let me tell you: A direct trade between the United States and the West Indies in vessels not exceeding *seventy tons* in burden; but the United States were under an obligation to restrain their vessels from carrying certain articles, the produce of those islands, to any other place than the United States. The Americans were forbidden from "carrying any molasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his Majesty's islands or from the United States, to any part of the world except the United States." The treaty restored the ports of the western frontier, but without indemnity for their long detention, or for the slaves carried off by Sir Guy Carleton. Ship timber, tar, hemp, sails, and copper were declared contraband, though free in all other treaties made by the United States. Provisions were declared contraband, and there was an express declaration that the flag did not cover the merchandize—the only treaty ever signed by the United States in which such an acknowledgment is to be found. England, however, at the peace of Utrecht, had acknowledged *that the flag covered the merchandize*. Thus nothing was secured. None of the rights which Mr. Jay had been directed to assert and vindicate were recognized, and the treaty signed by him justified the judgment passed upon its merits, through the appellation by which it went, of an instrument *that settled nothing*. Nor were those rights respected by England after the treaty. Her aggressions went on, increasing until they forced us into the very extremities which the neutrality was intended to provide against; and we realized the pungent witticism by which one of our early statesmen defines a neutral power—"a power that both belligerents plunder with impunity."

Lyman, from whom I have already quoted, writes thus of the motives which induced the United States so long to forbear under repeated inflictions of outrage and wrong:

"America, a new State, was thrust hastily, with all the attributes of sovereignty, into the midst of the old nations of Europe. Not having grown up with them, trying her wings, feeling her strength as she advanced to mature age along with those powers, her relative position was not ascertained, and acts of the parties engaged in the European wars were patiently endured, not from want of sagacity and spirit, both to perceive and resist the injustice and wrong, but from a well-founded doubt and distrust of the real strength of the people."

And, qualifying, afterwards, the system of self-denial which was then adopted, he adds that it was "both originally mistaken, and pursued to a pernicious extent."

I desire now to direct the attention of the Senate to the sentiments entertained by Washington of the obligations which this country had assumed under the proclamation of neutrality. He clearly did not consider that it had so fettered this government as to wrest from it all discretion to determine how far it could interfere and take concern in the affairs of the world. He was not the man who could have surrendered the right of asserting boldly and fearlessly those principles which were at the very bottom of our independence, and stood up to our dignity, whenever and wherever they might be assailed or put in danger.

Sir, at the very moment that he was instructing Mr. Jay to listen to propositions of a treaty on the part of England—at the very time he was asserting, through that minister, the rights of neutrals—he was urging also the expediency of sounding ministers then at the Court of London, as to the probability of an alliance with their respective nations, to support certain principles involving great international interests.

I find amongst the instructions given to Mr. Jay, the following:

"You will have no difficulty in gaining access to the ministers of Russia, Denmark, and Sweden, at the Court of London. The principles of the armed neutrality would abundantly cover



our neutral rights. If, therefore, the situation of things, with respect to Great Britain, should dictate the necessity of taking the precaution of foreign co-operation upon this head, if no prospect of accommodation should be thwarted by the danger of such a measure being known to the British court, and an entire view of all our political relations shall, in your judgment, permit the step, *you will sound those ministers upon the probability of an alliance with their nations to support those principles.*"

One of Mr. Jay's objects was, therefore, to obtain the recognition of *certain principles*; but, if he should not succeed in this, what was he to do? Await until they were assailed and put in peril at our own doors? By no means; but proclaim them to the world under the sanction of powers allied with us to enforce them, that it might be understood on what grounds America would act, and would insist to be dealt with.

There is another fact in the diplomatic history of that epoch which most strikingly illustrates what opinions were entertained by the immediate advisers of Washington with respect to the course which it might be expedient for this country to pursue, under circumstances arising out of that neutrality which, it is said, constituted then the policy of this Government.

But before I proceed to enter this branch of the subject, let me place before you, Mr. President, a fact that will speak out louder than any words of mine, how far Washington himself considered that his proclamation of neutrality constrained the American Government from interposing where the eternal right of nations to provide for themselves a suitable government was interfered with by powers foreign to them. On the 10th of June, 1794, he directs his Secretary of State to instruct Mr. Monroe—then our minister to France—to the following effect:

"You will assure the French Government that the President has been an early and decided friend of the French revolution; and whatever reason there may have been, under our ignorance of facts and policy, to suspend an opinion upon some of its important transactions, yet *is he immutable in his wishes for its accomplishment—incapable of assenting to the right of any foreign Prince to meddle with its interior arrangements.*"

Nor were these proceedings on the part of the American Government in contradiction with the recommendations contained in the Farewell Address, as I shall hereafter most conclusively show.

Let me now remark that the address bears date September 17, 1796. We are—I mean in thought—in 1797, at a most critical epoch of our history, when painful difficulties were on the eve of breaking out between us and France. Washington had been recalled to the command of the army. Alexander Hamilton was to be his second in that command. Such was the confidence which Washington reposed in Gen. Hamilton that he made his appointment to this high rank the condition of his own acceptance of the trust tendered him by President Adams.

The Spanish colonies were in great ferment. The example of the British colonies had roused their spirit, and moved them into an active search of assistance to shake off the authority of the mother country. They had sent to Europe emissaries, who were now holding council in Paris. From that place these emissaries were sending confidential agents in all directions to promote the great object of their mission—the emancipation of the Hispano-American colonies. They had just agreed to a *projet* which they had sent to England, to be submitted to the gigantic, though youthful, minister who then lorded it over the destinies of that country.

Here is an extract from that *projet*:

"ARTICLE 4. A defensive alliance formed between Great Britain, the United States, and South America, is so recommended by the nature of things—by the geographical situation of the three countries—by the productions, wants, character, habits, and manners of the three nations—that it is not possible that it should not long continue, especially if care is used to consolidate it by an analogy in the political form of the three governments—that is to say, by the enjoyment of civil liberty wisely conceived," &c. &c.

General Miranda—who, up to this moment, had been opposed to any such movement on the part of the Spanish colonies—was persuaded to join in this scheme; and he immediately wrote to Mr. Hamilton, asking his co-operation

and support. "It appears," says he in one of his letters, "that the moment of our emancipation is arriving, and that the establishment of liberty on the whole American continent is confided to our care by Providence." Here was, you will admit, Mr. President, a fair opportunity for testing the principles of neutrality laid down in the proclamation, and the doctrine of non-interference asserted in the Farewell Address, as constituting the settled and permanent policy of the country. Here is the answer of Hamilton to General Miranda :

"NEW YORK, August 22, 1798.

\* \* \* \* \*

"The sentiments I entertain in regard to that object have been long since in your knowledge ; but I could personally have no participation in it, unless patronized by the Government of this country. It was my wish that matters had been referred for a co-operation in the course of this fall on the part of this country ; but that can now be scarcely the case. The winter, however, may mature the project, and an actual co-operation by the United States may take place. In this case I shall be happy in my official station to be an instrument of so good a work.

"The plan, in my opinion, ought to be, after that of Great Britain, an army of the United States—a government for the liberated Territories agreeable to both co-operators, but about which I think will probably be no difficulty. To arrange the plan a competent authority to some person here from Great Britain is the best expedient. Your presence here will in this case be extremely essential. We are raising an army of 12,000 men. General Washington has resumed his station at the head of the army. I am appointed second in command.

"With esteem and regard, &c.,

"A. HAMILTON."

Nor was this correspondence so mysterious as not to admit of its secret being transferred to the cabinet council of Mr. Adams, and to the foreign minister then representing this country at the court of England.

Mr. Hamilton encloses his answer to Miranda in a letter to Rufus King, in which he alludes to the disclosure which he had made in high quarters of the whole scheme. He writes thus, on the 22d of August, 1798 :

"I have received several letters from Miranda. I have written an answer to some of them, which I send you to deliver or not, according to your estimate of what is passing in the scene where you are. Should you deem it expedient to suppress my letter, you may do it, and say as much as you think fit on my part, in the nature of a communication through you.

"With regard to the enterprise in question, I wish it much to be undertaken : but I should be glad that the principal agency was in the United States—they to furnish the whole land force, if necessary. The command, in this case, would very naturally fall upon me ; and I hope I should disappoint no favorable anticipations. \* \* \* \* \*

"Are we yet ready for this undertaking? Not quite ; but we ripen fast, and it may, I think, be rapidly brought to maturity, if an efficient negotiation is at once set on foot upon this ground. Great Britain cannot alone insure the accomplishment of the object. I have some time since advised certain preliminary steps to prepare the way consistently with national character and justice. I was told they would be pursued ; but I am not able to say whether they have been or not."

In a subsequent letter of General Miranda to Hamilton, I find what follows :

"Your wishes are, in some degree, fulfilled, since it is here agreed (he writes from London) that the English troops shall not be employed in the land operations. The naval force shall be English, while the troops employed will be American. Every arrangement is made, and we are only waiting for the declaration of your President to depart."

I need go no further to show that the policy which Washington meant to recommend and to act upon, was, that while we should not entangle ourselves in *permanent alliances*, or implicate our interests in the *ordinary vicissitudes* and the *ordinary combinations* of the politics of Europe, while we might trust to *temporary alliances* for extraordinary emergencies, we should not, therefore, disown ourselves, and cower beneath the fear of giving umbrage by a dignified assertion of our rights under the law of nations.

We have found him as early as 1794, not a year after the proclamation of neutrality, directing Mr. Monroe to give assurances that he was *incapable of assenting to the right of any foreign prince to meddle with the affairs of other nations*. About the same time he instructs Mr. Jay to sound the ministers of Russia, Denmark, and Sweden, as to the probability of an alliance with their nations to support certain principles, and, behold ! he urges the mustering of our forces at the very moment when Hamilton joins a combination through which an American army of



12,000 men is to enter Mexico, under his lead, to effect the independence of that country. Is not this policy of action a disclaimer of that other policy advocated upon this floor by the mover of the original resolutions, and by those who side with him? But we have still another example tending to subvert the entire structure built up by the advocates of the policy of impassiveness. I have shown what construction, in practice, Washington had placed upon the principles laid down in the proclamation and in the Farewell Address. His policy ended not with him. It went on, infusing itself through those who came after him. President Monroe, who had enjoyed his full confidence, who must be presumed to have imbibed his opinions and views, did not hesitate to take a bold and decisive stand, when came the crisis which threatened a coalition of certain European powers to reduce the Spanish colonies to submission, and to organize them again into monarchies. You will remember, Mr. President, that famous passage in the address which he sent to Congress in December, 1823; though the solemn declaration has fixed itself indelibly in the memories and hearts of our people, the circumstances that brought it about are comparatively but little known, and may not seem unworthy of a brief notice. Mr. Rush, a statesman of the most pure patriotism, as well as of the highest order of intellect and talent, whose lofty character has so deeply impressed itself in the diplomatic history of that period, who exhibited in his person the rare combination of the most profound wisdom and the most extensive knowledge, with the bland and fascinating manners, the accomplishments and polish of the gentleman, who never said a word that was improper, nor betrayed a thought that might peril his country's fortunes—Mr. Rush was minister at the court of St. James. Among the important negotiations intrusted to his management was that of obtaining from England a recognition of independence for the Spanish colonies. He approached the subject with inexpressible skill and adroitness, and soon brought the British minister to his views, by suggesting a joint declaration of the principles upon which that independence should be vindicated. The conferences which took place between him and Mr. Canning are full of a most lively interest, and pay richly the reader for the time he bestows upon their perusal. I am sure I will not seem ungracious to the Senate if I attempt to put them in possession of some remarkable passages which I have extracted from the book in which they are registered.

Alluding to (1823) a note from Mr. Canning to the British ambassador at Paris relative to a presumed design on the part of France to bring some of the Spanish possessions in America under her dominion, either by conquest or by cession from Spain, Mr. Rush had expressed the sentiment that it implied clearly that "England would not remain passive under any such attempt by France." Mr. Canning then asked Mr. Rush, "*What he thought the American government would say to going hand in hand with England in such a policy.*"—"Residence at the Court of London," p. 400.)

In the course of the same conversation Mr. Canning added that—

"The knowledge that the United States would be opposed to it as well as England could not fail to have its decisive influence in checking it."—(Ibid, p. 403.)

And in a note bearing date the 20th of August, 1823, he asks again :

"If the moment has not arrived when the two governments (England and the United States) might understand each other as to the Spanish American colonies; and if so, whether it would not be expedient for them, and for all the world, that their principles in regard to those colonies should be clearly settled and avowed; that as to England she had no disguise on the subject."—(Ibid, p. 412.)

In reply to Mr. Canning's communication, Mr. Rush declared—

"That the United States would view as unjust and improper any attempt on the part of the powers of Europe to intrench upon the independence of the Spanish possessions in America."

And in a note of August 27, he asserts

"That his Government would regard the convening of a European Congress to deliberate upon the affairs of the Spanish colonies as a measure uncalled for, and indicative of a policy *highly unfriendly to the tranquility of the world*; that it could not look with insensibility upon such an exercise of European jurisdiction over communities now exempt from it, and entitled to regulate



their own concerns unmolested from abroad.”—(p. 419.) “That, could England see fit to consider the time as now arrived for fully acknowledging the independence of the new communities, he (Mr. Rush) believed that not only would it accelerate the steps of this Government, but *that it would naturally place him in a new position in his further course on the whole subject.*”

“Should I be asked,” writes Mr. Rush in his letter to the American Secretary of State, dated London, August 28, 1823—“Should I be asked by Mr. Canning whether, in case the recognition be made by Great Britain without more delay, *I am on my part prepared to make a declaration, in the name of my Government, that it will not remain inactive under an attack upon the independence of those States by the Holy Alliance, the present determination of my judgment is, that I WILL MAKE SUCH A DECLARATION EXPLICITLY, AND AVOW IT BEFORE THE WORLD.*”—(P. 421.)

Nor was Mr. Rush insensible of the importance of the step he was prepared to take. In his communication to the American Secretary of State of April 30th, of same year, he says:

“I am fully sensible of the magnitude of the subjects to be treated of, *the complicated character of the considerations involved in most of them, and of their momentous bearings, in present and future ages, upon the interests, the welfare, and the honor of the United States.*” These words borrowed from the Secretary’s own letter to which he was answering.—(P. 423.)

On the 15th of September Mr. Rush writes to the President:

“That it is still his intention to urge upon Mr. Canning the immediate recognition of the new States by Great Britain as the only footing upon which he could feel warranted in acceding to the proposal made to him.”—(P. 427.)

Speaking of the declaration asked of him by Mr. Canning, he remarks:

“The value of my declaration would depend upon its being formally made known to Europe. Would not such a step wear the appearance of the United States implicating themselves in the political connexions of Europe? Would it not be acceding, in this instance at least, to the policy of one of the great European powers, in opposition to the projects avowed by others of the first rank? This hitherto had been no part of the system of the United States. The very reverse of it had been acted upon. Their foreign policy had been essentially bottomed on the great maxim of preserving peace and harmony with all nations, without offending any, or forming entangling alliances with any. Upon the institutions as upon the dissensions of the European powers, the Government and people of the United States might form and even express their speculative opinions; but it had been no part of their past conduct to interfere with the one, or, being unmolested themselves, to become parties to the others. In this broad principle laid one of my difficulties under his proposal.”

To this Mr. Canning would reply:

“That, however just such a policy might have been formerly, or might continue to be as a general policy, he apprehended that powerful and controlling circumstances might make it inapplicable in particular occasions,” &c.

And upon the rejoinder Mr. Rush again says:

“For myself, speaking only as an individual, I could well conceive that the interposition of an authoritative voice by the United States, in favor of these communities, admitting that the powers of Europe usurped a claim to control their destinies, would imply no real departure from the principles which had hitherto regulated their foreign intercourse, or pledge them henceforth to the political connexions of the Old World. If, too, that voice happened to be in unison with the voice of Great Britain, it might prove but the more auspicious to the common object which both nations had in view, without committing either to any systematic or ulterior concert. But I added, that as the question of the United States expressing this voice, and promulgating it under official authority to the powers of Europe, was one of entire novelty as well of great magnitude in their history, it was for my government, and not for me, to decide upon its propriety.” \* \* \*

“Let Great Britain immediately and unequivocally acknowledge the independence of the new States \* \* \* I will not scruple, on seeing that important event come about, to lend my official name to the course proposed, and count upon my government stamping with its subsequent approval what I have done.”—(Pp. 436, 437.)

Mr. Rush then goes on to tell us that—

“By the early transmission of the proposals made to him by Mr. Canning, in his notes of the latter end of August, the copies of them, as well as of his reports of the conferences on the whole subject, arrived at Washington in time to engage the deliberations of President Monroe and his cabinet, before the meeting of Congress in December, and it was very satisfactory to him to learn that the part he had acted was approved.”—(Pp. 456, 457.)

The policy of impassiveness, therefore, has no warrant in the past, and the warnings of Washington and of his compeers, so far, do not reach the ground covered

by this debate. Let me define distinctly the position which I mean to occupy. I am not for entangling ourselves by permanent alliances in the ordinary vicissitudes of foreign politics, or in the ordinary combinations and collisions of foreign friendship or enmities. I am for trusting to temporary alliances in extraordinary emergencies; but I cannot be for surrendering the high rank which we are entitled to occupy at the council-board of nations. I can neither abdicate the rights which that position implies, nor disavow the obligations which it imposes; and, inasmuch as the amendment proposed by the distinguished Senator from Michigan (Mr. Cass) carries me not beyond the ground embraced in the avowals just stated; to that amendment shall I give my unqualified support and vote. It embodies my views in the guarded yet significant form of its language; it speaks out in dignified tones sentiments which respond to the throbs of every American heart, and shows that while penning its resolves the distinguished Senator had not out of mind the remark made by Washington in his message of December 3d, 1793, "*that there was a rank due to the United States among nations which would be withheld, if not entirely lost, by the reputation of weakness.*"

But suppose I were in error with respect to the bearing of the Washingtonian policy, as exemplified by his own doings, the question would still remain, whether it was ever intended it should remain an immutable rule, to be pursued by this Government under what changes soever might occur in the history of its progress.

Speaking of our commercial intercourse with foreign nations, Washington himself, in his Farewell Address, recommends the "*establishment of certain conventional rules, the best that present circumstances and mutual opinions will permit, but temporary, and liable to be from time to time abandoned or varied, as experience and circumstances shall dictate.*"

Our policy, upon the same principle, must also change. It is not in the power of man to impart immutability to any of its works. Our policy must change; it will change. Who is the statesman, where is the statesman, who will consider himself so constrained by the traditions of the past as to admit that it should bind the present in shackles, and keep the future in thralldom? Sir, we cannot thus be enslaved to the opinions and judgments of those who have preceded us. Are we the nation we were in 1793? Does Europe stand to us in the relation it then stood? Consider: We were but three millions of people then; we are now twenty-three millions. The area of our territory exceeded hardly eight hundred thousand square miles; it now measures upwards of three millions. Our commercial relations with the whole world embraced an aggregate of one hundred and fifteen millions of dollars; they reach now to upwards of three hundred and eighteen millions: on a comparative survey of the commercial progress of this country and of England we find that, while the mercantile movement of the United States in half a century has increased in the ratio of three hundred per cent., that of England has only attained two hundred per cent. Taking for granted that the two countries will progress in the same ratio during the coming century, we find that in 1890 the commerce of the United States will be eight hundred and seventy millions, that of England twelve hundred millions; and in 1940 the commerce of the United States will be twenty-three hundred and seventy-seven millions, while that of England will only be twenty-two hundred and eighty-nine millions—thus leaving the United States with a surplus over England of eighty-eight millions.

We have now a seacoast extending 5,620 miles in length; it extended in 1793 but 1,700 miles. We had scarcely a commercial marine; now our steam force alone amounts to upwards of fourteen hundred steamers, measuring 417,283 tons; while the whole steam marine of all Europe in 1848 did not exceed twelve hundred and twenty-four steamers, of 164,713 tons burden.

To insist, sir, that while our numbers, the extent of our territory, our commerce, and our shipping, have so much changed, our interests, our wants, our rights, our obligations under those rights, should remain what they were sixty-five years ago, is to scorn the teaching of our judgment, and to belie the wisdom of God.

But it is said that we should have no concern with interests connected with Eu-



ropean policy, and that we should confine ourselves to extending our commercial relations with foreign countries without ever entangling ourselves in their politics—aye, sir, if we can so separate those relations as to keep them in absolute freedom of each other; but this it is not in our power to effect. Commercial intercourse will, and must of necessity, beget political entanglements. The question is not how you may avoid them—they will defy your prudence, and put in default all your diplomacy—but the question is, how will you meet them with the least possible danger to your peace and your prosperity; you could not, if you would, disconnect yourselves at this day from Spain, England, or Russia. There they stand nailed to your sides. Suppose for a moment that Spain chooses to transfer Cuba to a foreign government, would we stand still? Suppose England were to exercise somewhat more ostensibly than she does at present her dictatorship over the Central American republics, would you stand still? Suppose Russia should reissue her ukase of 1821, and so extend the circle of prohibition, which she had then the boldness to draw around herself, as to exclude you entirely from the northern waters of the Pacific, would you stand still? No, sir; you would not—you could not. Again, sir: suppose England were induced to join a European coalition, and become a party to another *continental system*, can you realize what advantages Europe could tender her that would not be ruinous to your interests? Might not, perchance, a new Pozzo de Borgo instil into the brains of some raving autocrat the thought, by him suggested in 1817, of subjugating these States, in order to protect the world against the poisonous effects of their institutions? \*

I repeat it again, you have no power either to surrender your rights or to disown your obligations. Assert your rights and fulfil your obligations. Let the world know that while you are prepared to comply with the latter, you cannot suffer the former to be questioned or invaded. But some will say: this is war! Not quite. And if it were, I could not see that we ought on that account abstain from asserting what is good and just in itself. Know you not, sir, that moral power, in time of war as well as in time of peace, acts the first part, and often coerces the power of numbers to unconditional surrender? Let me read you from Heffter a few lines, which define more accurately, than any thing I have yet read, the origin, the sanction, and the imposing commands of the law of nations:

“The law of nations has neither lawgiver nor supreme judge, since independent States acknowledge no superior human authority. Its organ and regulator is public opinion. Its supreme tribunal is history, which forms at once the rampart of justice and the Nemesis by which injustice is avenged. Its sanction, or the obligation of all men to respect it, results from the moral order of the universe, which will not suffer nations and individuals to be isolated from each other, but constantly tends to unite the whole family of mankind in one great harmonious society.”

What! speak you of isolation? Have you not markets to retain for your present excess of production, and markets to secure for the surplus of your future wealth? Can you rely on the sympathies of Princes, Kings, or Czars, for a continuance of those relations which alone can enable you to retain the advantages which you enjoy on the old continent? Disown not yourself. Be not unmindful that you are a member of the great family of nations. Do not repudiate the relations

\* A SINGULAR HISTORICAL FACT.—The New York Express brings to light a singular historical fact which is not generally known. It says that, in 1817, a Russian of eminence, M. Pozzo de Borgo, being then in Paris, proposed in a memoir, addressed to his court on the importance of replacing South America under the dominion of Spain, that the United States should be subjugated. He said that, “founded on the sovereignty of the people, the republic of the United States of America was a fire, of which the daily contact with Europe threatened the latter with conflagration; that as an asylum for all innovators it gave them the means of disseminating at a distance, by their writings, and by the authority of their example, a poison of which the communication could not be questioned, as it was well known that the French revolution had its origin in the United States; that already troublesome effects were felt from the presence of the French refugees in the United States.” The Russian ambassador went on to state and argue that the conquest of the United States was an easy enterprise; that the degree of power to which the Americans had risen made them objects of fear to the European monarchical governments, &c. The editor of the Express came in contact with this curious paper in the State Library at Albany, in an old file of the Missouri Republican, printed more than thirty years ago.



which that membership implies. The law that binds nations to each other is your law as well as theirs. Let it not be violated with impunity. That law rests on the dictates of public opinion. Will you give up your share in forming it? In vain seek you to remain isolated. The tendencies of your political organization, your commercial as well as your social interests, that thirst after the unknown, which you can neither compress nor satisfy, will throw you forcibly into contact with foreign powers. What their policy may induce them to attempt against your commerce, will not cease to be a political aggression, though it should affect only your mercantile interest. With the progressive ratio of your production compared with your population, you may have in 1900 an excess of seven hundred millions in your produce. Where will you find a market for it? In the East!—in the East! There you must look to for custom—thither 750,000,000 of consumers invite your commodities and your excess of wealth. The dependence of England on your great staple for the supply of her extensive manufactories, may counsel her to take you into partnership in the enjoyment of the gorgeous boon. But should Russia gain the ascendancy there, what would your prospects be? Her policy is essentially exclusive, antagonistic to your interest. Suppose she lays hands on Turkey, and shuts you out of the Mediterranean: might not this great basin become again the great reservoir and entrepot of Eastern commerce? You see then, sir, that interest alone presses you on all sides not to remain isolated. In self-defence you are bound to watch every movement of European policy. See how strangely have fallen those Balkans which wise and far-seeing statesmen had raised in the combined strength of Hungary and Austria against the devouring ambition of the Cossack! Austria, now a Russian province, is but a relay to the Czar on his route to Turkey. He can now approach Constantinople by Vienna as surely as by Bucharest.

It may be too late for us to interpose a protest against an accomplished wrong; it is never too late to provide against its recurrence. Do not late events speak loud of the future? See you not England herself succumbing to the continental coalition? How anxious she seems not to give offence to European despots! Mark her condescensions to their biddings. On the very day that Lord Palmerston was surrendering his seals, Vienna was revelling in joy and exultation at the triumph which the anticipated fall of that minister prepared to Austria. Lord Malmesbury bends in humble compliance to the remonstrances of France and Austria, and narrows the circle of the liberties conceded to European exiles; and Lord Derby inaugurates his advent to power by withdrawing the bill which extended the electoral franchises of the British subjects; and thus is England belying her past, as if she no longer recollected those proud days of her glory when her minister could exclaim in the House of Commons, “We go to plant the standard of England on the well known heights of Lisbon; where that standard is planted foreign dominion shall not come;” or, when hurling defiance at France, then in possession of Spain, the same minister triumphantly avowed his resolution, “that if France had Spain, it should not be Spain with the Indies; that he had called the New World into existence to redress the balance of the Old.” But, sir, while she shows herself so submissive to European despotism, see how menacingly she rides our waters, and how arrogantly she deals out her protectorate to Nicaragua, Costa Rica, and the kingdom of Mosquito. Even this wavering and irresolute administration of ours could not but speak out high words of complaint—nay, sir, the very words of the amendment introduced by the senator from Michigan, to remonstrate against the untoward assumption. But, the complaint was soon stilled by empty excuses in one case, and in the other by the reassertion of the very right and power denied and protested against. The Senate will recollect what occurred upon the appearance of the French and British squadrons in the Gulf of Mexico. A conference took place on that occasion between the acting Secretary of State and Mr. Crampton, then British charge d'affaires to this Government, and a correspondence was had between the same acting Secretary and the French minister, in both of which our Government asserted *its deep concern* at the unlooked-for interference, and insisted

upon obtaining satisfactory explanations. The French minister, with a frankness and in a tone which do great credit to his character, and yet with that dignified reserve that behooved the representative of a great nation, met the question in perfect fairness, and declared, "first, that the instructions issued by the Government of the republic were spontaneous and isolated; secondly, that those instructions were exclusive, for an exclusive case, and applicable only to the class, and not to the nationality, of any pirate or adventurer that should attempt to land in arms on the shores of a friendly nation."

The answer was conclusive, and this government deemed it satisfactory. But how was it with the British charge d'affaires? The memorandum of the conference informs us that "Mr. Crampton, at an interview with Mr. Crittenden at the Department of State, on the 27th of September, 1851, stated that he had been directed by her Majesty's government to say to the United States Secretary of State that her Majesty's government had learned, WITH DEEP REGRET, that expeditions have again been prepared in the ports of the United States for an attack upon a territory belonging to a sovereign at peace with the United States and in friendly relations with her Majesty."

"That her Majesty's Government deem it due to the frankness which ought to characterize the intercourse between the two Governments to state to that of the United States, THAT HER MAJESTY'S SHIPS-OF-WAR ON THE WEST INDIA STATION WILL HAVE ORDERS TO PREVENT BY FORCE ANY ADVENTURERS, OF ANY NATION, FROM LANDING WITH HOSTILE INTENT UPON THE ISLAND OF CUBA." I had thought, sir, that, under the prevalence of this doctrine of non-intervention, the illustrious statesman who is at the head of the State Department, with that tone of voice that bespeaks the depths of his thoughts, though not always the invincible energy of his will, might have gravely told the British Charge: "Sir, this is no concern of yours. Withdraw your ships. We can minister for ourselves the police of our affairs over our own waters." But I am mistaken, I think; it was not Mr. Webster, but Mr. Crittenden, who then occupied the chair of State. And very strenuously does he retort, "*That the President could not, WITHOUT CONCERN, witness any attempt to accomplish the object*" in contemplation of the British Government "*by means which might eventually lead to encroachments on the rights of the people of the United States;*" that "the execution of the orders received by her Majesty's squadron would be the exercise of a sort of police over the seas in our immediate vicinity, covered as they are with our ships and our citizens; and it would involve, moreover, to some extent, the exercise of a jurisdiction to determine what expeditions were of the character denounced, as well as who were the guilty adventurers engaged in them:" and he closed by expressing "the hope that there may never arise any occasion for carrying any such orders into execution." What answer, Mr. President, do you suppose Mr. Crampton made to the State Department? Here is the communication he addresses to Mr. Webster on the 12th of November. It encloses a letter to himself from Lord Palmerston, reasserting, as I have already said, the very right and assumption of power complained of and protested against.

BRITISH LEGATION, WASHINGTON, November 12, 1851.

SIR: With reference to our conversation on the 10th inst., and in compliance with your desire, I have the honor to enclose a copy of the despatch addressed to me by Lord Palmerston, which I then read to you, upon the subject of the orders issued to her Majesty's ships-of-war on the West Indian station, respecting unauthorized expeditions against the Island of Cuba.

I avail myself of this opportunity to renew to you, sir, the assurance of my highest consideration,  
THE HON. DANIEL WEBSTER, &c., &c., &c.

JOHN F. CRAMPTON.

[No. 16.]

FOREIGN OFFICE, October 22, 1851.

SIR: I have received your despatch No. 29, of the 6th instant, and I have to acquaint you that her Majesty's Government approves the course pursued by you in communicating to the Government of the United States the orders issued by her Majesty's Government to the Commander-in-chief of her Majesty's ships in the West Indies, respecting the prevention of lawless expeditions against Cuba.

If you should have any further conversation with the Secretary of State of the United States on this subject, you may assure him that every care will be taken that, in executing these pre-



*ventive measures against the expeditions of persons whom the United States Government itself has denounced as not being entitled to the protection of any government, no interference shall take place with the lawful commerce of any nation.*

I am, &c.,

PALMERSTON.

JOHN F. CRAMPTON, Esq., &c., &c., &c.

Here is, then, on the part of England, the assumption of the right not only to exercise her police over our waters and over vessels sailing under American colors, but to decide for herself of the nature and character of an expedition departing from our shores; for, the squadron "*has orders to prevent by force, any adventurers of ANY NATION from landing, WITH HOSTILE INTENT,*" upon the island of Cuba! Has reparation been yet demanded of the insult thus offered to the majesty of the American flag? Has the minister of England apologized for the unceremonious evasion with which the charge d'affaires escaped the necessity of a committing answer? The accomplished and skilful gentleman who now represents Great Britain near this republic would be loth to admit that his government had transcended its privileges, or might, under any circumstances, surrender the exercise of its assumed rights. Here was, you will admit, Mr. President, a fit opportunity for this administration to display some of that watchful energy which it so mercilessly exhibited on a kindred occasion. Why is it that it suffered its wrath to be so easily soothed and its susceptibilities to slumber? What business had it to be thus tolerant and accommodating when it had pursued, with such an unrelenting severity and rancor that little band of deluded, but brave and chivalrous men who had engaged in that unfortunate and ill-advised expedition which ended so miserably at Baya Honda? Was it love for non-intervention that prompted the policy which branded the invasion with deadly names, and doomed the invaders to an ignominious slaughter? Sir, I disapproved then, as I disapprove now, the reckless undertaking; but those who engaged in it had stout and noble hearts; they were enthusiasts—maniacs, if you choose—but enthusiasts maddened by the most disinterested and the most lofty aspirations. What right had this administration to track them through the waters of the Gulf, beyond the line of our municipal jurisdiction? Will its friends show me where, in the constitution, is lodged the power which the President thought proper to exert on that occasion? And, as if the butchery made of fifty of our citizens, slaughtered in full daylight, within view of our flag waving sadly over our ships-of-war, and in wanton violation of the most solemn and the most explicit treaty stipulations, was not enough to satisfy the most extravagant exactions of Castilian pride, Castilian punctilio, and Castilian revenge, we are driven to witness, in the great metropolis of the South, the heart-rending spectacle of a salute booming out to exulting Spain repentance and atonement in the name of the United States of America! The triumph won by the Spanish minister on this occasion, over the susceptibilities, once so keen, of our statesmen, has no precedent in the annals of the diplomatic history of any nation.

But to return to the present aspect of affairs in Europe, and to the new attitude in which England stands to the continental powers;—Believe you, sir, that she would now be so humble, so dejected, so submissive to Austro-Russian dictation, if she had firmly stood up by those principles which her Chathams and her Cannings had so proudly proclaimed to the world? How dearly she pays for her impassiveness, while the Roman Republic was fatting under French bayonets, while Hungary was slaughtered by Russian sabres, and while Cracow laid prostrate at the feet of her plunderers.

Sir, let us not be lulled into slumber by the idea that we are too distant from Europe to be affected by her political convulsions. Know you not that violence and oppression are contagious, and that their triumph, in any point of time, or on any point of the globe, reacts on the moral world?

What, Mr. President, speak of isolation, when you can ride your floating palaces from continent to continent in less time than it took your fathers, fifty years ago, to travel from Buffalo to New York—from Boston to Philadelphia!—when every wave of the ocean brings you swift messengers, blown over to these western shores



by the same breeze that wafted them away from the eastern hemisphere?—when, low as it beats, you can hear every pulsation of the European heart beneath the iron hands that strive to compress and stifle its languid and agonizing energies?

But it is insisted that an expression of our sympathies is more a matter of sentiment than of right and policy. Ah, sir, I pity the statesman who does not know that public sentiment, which sometimes supplies and sometimes corrects the law, is always its strongest support.

Sir, believe me, it is our interest, and if not our interest, our duty, to keep alive, by good offices among the nations of Europe, that reverence for the institutions of our country, that devout faith in their efficacy, which looks to their promulgation throughout the world as to the great millennium which is to close the long calendar of their wrongs. Let their flame light up the gloom and dispel the darkness that now envelop them. Humbled though they be, despise them not. It was not their choice, but treachery that made them slaves; and if you should ask why is it that they seem to look with approving smiles and contented hearts to the hands that brandish the rod over them, forget not those deluded wretches destined to the beasts, for the entertainment of the Roman Emperors, who could not be persuaded that Cæsar was not Rome and who, upon entering the Coliseum, as they passed his seat, would bow to him, in respectful submission, and exclaim: "*Cæsar, morituri te salutant*"—Cæsar, though doomed to die, we salute you.

I heard, the other day, the honorable Senator from Tennessee, in one of those soul-stirring feats of eloquence so peculiarly his own, disclaim that there be any thing like destiny in the callings of a nation. How could he have thus overlooked that there is not a work of God's wisdom, nor a striving of the human intellect, that bears not the indelible seal of destiny? Onward! onward! is the injunction of God's will as much as *Ahead! ahead!* is the aspiration of every American heart. We boast exultingly of our wisdom. Do we mean to hide it under the bushel, from fear that its light would set the world in flames? As well might Christianity have been confined to the walls of a church or to the enclosures of a cloister. What had it effected for mankind, what had it effected for itself, without the spirit that promulged it to the world? Onward! onward!! To stand still is to lie lifeless—inertia is death. Had Mahomet stood still, would he and the mountain have got together? Had the colonies stood still, would this be the Government it is? Had Jefferson and Polk stood still, would Louisiana be ours? Would Texas, would California, sit here in the bright garments of their sovereignty?

You commend the policy of the fathers of the republic as if time, that withers the strength of man, did not "throw around him the ruins of his proudest monuments." Have I not shown how mutable it had been? Let us not calumniate the past by fastening its usurpations upon the future. I revere its teachings, but cannot submit to make them the measure of present wisdom. Speaking of the sages whose names and authority have so often been invoked in this debate, the elder Adams attempts to exculpate the narrowness of their views and policy by this remark: "The present actors on the stage have been too little prepared by their early views, and too much occupied with turbulent scenes, to do more than they have done." And with what ardent fervor and hope, with what enthusiasm, he speaks of the scenes which display themselves to his view in the future of his country! "A prospect into futurity in America is like contemplating the heavens through the telescope of Herschel. Objects stupendous in their magnitude and motions strike us from all quarters and fill us with amazement!"

My reverence for opinions consecrated by the authority of the sages who preceded us will not induce me to disintegrate this republic, and shear from its domain Louisiana, Texas, Florida, the Californias, and New Mexico, because, forsooth, Washington, Adams, and Hamilton may have held that any accession of new territory to the area embraced by the old States was unconstitutional. I could not give a vote for the rechartering of a national bank because its institution had the assent of the same great men. Nor could I shut my ears, on their account, to those whisper-

ings of the future that betoken the rising of new generations impatient to throw themselves on our lap. Sir, I have a mind to place before you the record of strange prophecies made on the future growth, strength, prosperity, and empire of these States, at a time when they were but dependent and subordinate colonies of a distant nation. They are to be found spread over in the Memorials of Mr. Pownall, who lived eight years in the colonies, from 1753 to 1756, who held successively the offices of lieutenant governor of New Jersey, of Governor of Massachusetts, and of governor of South Carolina, and who in those three capacities must be presumed to have been afforded every opportunity that could enable him well to appreciate in the people that surrounded him that peculiar forwardness and energy of purpose which have since realized so wonderfully what that great and wise man had contemplated in vision, through the telescope of his far-seeing mind. Sir, I feel assured that the Senate will thank me for trespassing yet a moment upon its patience, while I shall read some of his most striking revelations :

"North America has advanced, and is every day advancing, to growth of State, with a steady and continually accelerating motion, of which there has never yet been any example in Europe."

"It is young and strong." \* \* \* "Its strength will grow with its years, and it will establish its constitution and perfect adulthood in growth of State. To this greatness of empire it will certainly arise." \* \* \* "America will become the arbitress of the commercial world, and perhaps the mediatrix of peace, and of the political business of the world."

"Whoever knows these people will consider them as animated, in this new world, if I may so express it, *with the spirit of the new philosophy.*"

"Here one sees the inhabitants laboring after the plough, or with the spade and hoe, as though they had not an idea beyond the ground they dwell upon ; yet is their mind all the while enlarging all its powers, and their spirit rises as their improvements advance."

"The independence of America is fixed as fate. She is mistress of her own fortune ; knows that she is so, and will actuate that power which she feels, both so as to establish her own system and to change the system of Europe."

"Those sovereigns of Europe who have been led by the office system and worldly wisdom of their ministers—who, seeing things in those lights, have despised the unfashioned, awkward youth of America—when they shall find the system of this new empire *not only obstructing but superseding the old systems of Europe*, and crossing upon the effects of all their settled maxims and accustomed measures, they will call upon these their ministers and wise men, '*Come, curse me this people, for they are too mighty for me ;*' their statesmen will be dumb ; but the spirit of truth will answer, '*How shall I curse whom God hath not cursed ?*'"

"America will come to market in its own shipping, and will claim the ocean as common—will claim a navigation restrained by no laws but the law of nations, reformed as the rising crisis requires."

"America will seem every day to approach nearer and nearer to Europe. When the alarm which the idea of going to a strange and distant country gives to the homely notions of a European manufacturer or peasant shall be thus worn out, a thousand repeated repulsive feelings respecting their present home, a thousand attractive motives respecting the settlement which they will look to in America, will raise a spirit of adventure, and become the irresistible cause of an almost general emigration to that new world."

"Whether the islands in those parts called the West Indies are naturally parts of this North American communion is a question, in the detail of it, of curious speculation, but of no doubt as to the fact."

Then, giving way to the enthusiasm of his prophetic spirit, he addresses himself in direct language to America :

"A nation to whom all nations will come ; a power whom all powers of Europe will court to civil and commercial alliances ; a people to whom the remnants of all ruined people will fly ; whom the oppressed and injured of every nation will seek for refuge," he exclaims, "ACTUATE YOUR SOVEREIGNTY, EXERCISE THE POWERS AND DUTIES OF YOUR THRONE."

Arise ! ascend thy lofty seat,  
Be clothed with thy strength—  
Lift up on high a standard to the nations!!!

Mr. CASS. He was an old foggy after my own heart.

Mr. SOULE. And I rejoice that yours is a heart as stout and comprehensive as his.

Sir, public opinion has already responded to that mighty appeal from the past. It scorns the presumptuous thought, that you can restrain this now grown coun-



try within the narrow sphere of action assigned to its nascent energies, and keep it eternally bound up in swaddles. As the infant grows, it will require more substantial nourishment; more active exercise. The lusty appetites of its manhood would ill fare with what might satisfy the soberer demands of a younger age. Attempt not, therefore, to stop it in its onward career, attempt it not; for as well might you command the sun not to break through the fleecy clouds that herald its advent on the horizon, or to shroud itself in gloom and darkness as it ascends the meridian.

## APPENDIX.

The following original letter from General Washington to Mr. Madison, was introduced by Mr. Soule in the course of his speech, in illustration of one of the points he made, to the effect that the policy attributed to Washington was not among the suggestions which he submitted to Mr. Madison when he requested him to prepare a form for his Farewell Address:

MOUNT VERNON, May 20, 1792.

MY DEAR SIR: As there is a possibility, if not a probability, that I shall not see you on your return home; or, if I should see you, it may be on the road and under circumstances which will prevent my speaking to you on the subject we last conversed upon, I take the liberty of committing to paper the following thoughts and requests: I have not been unmindful of the sentiments expressed by you in the conversation just alluded to. On the contrary, I have again and again revolved them, with thoughtful anxiety, but without being able to dispose my mind to a longer continuance in the office I have yet the honor to hold. I therefore still look forward to the fulfillment of my fondest and most ardent wishes; to spend the remainder of my days (which I cannot expect will be many) in ease and tranquility. Nothing short of conviction that my dereliction of the Chair of Government (if it should be the desire of the people to continue me in it) would involve the country in serious disputes respecting the Chief Magistrate, and the disagreeable consequences which might result therefrom, in the floating and divided opinions which so prevail at present, could in no wise induce me to relinquish the determination I have formed; and of this I do not see how any evidence can be obtained previous to the election. My vanity, I am sure, is not of that cast, as to allow me to view the subject in this light. Under these impressions then, permit me to reiterate the request I made to you at our last meeting, namely: To think of the proper time and the best mode of announcing the intention, and that you would prepare the latter. In revolving this subject myself my judgment has always been embarrassed. On the one hand, a previous declaration to retire, not only carries with it the appearance of vanity and self importance; but it may be construed into a manoeuvre to be invited to remain. And on the other hand, to say nothing implies consent, or at any rate would leave the matter in doubt; and to decline afterwards might be deemed as bad and uncandid. I would fain carry my request to you farther than is asked above, although I am sensible that your compliance with it must add to your trouble; but as the recess may afford you leisure, and I flatter myself you have disposition to oblige me, I will, without apology, desire (if the measure in itself should strike you as proper and likely to produce public good or private honor) that you would turn your thoughts to a valedictory address for me to the public, expressing in plain and modest terms, that having been honored with the presidential chair, and to the best of my abilities, contributed to the organization and administration of the Government; that having arrived at a period of life when the private walks of it, in the shade of retirement, becomes necessary and will be most pleasant to me, and the spirit of the Government may render a rotation in the elective officers of it, more congenial with their ideas of liberty and safety; that I take my leave of them as a public man, and in bidding them adieu, (retaining no other concern than such as will arise from fervent wishes for the prosperity of my country,) I take the liberty at my departure from civil, as I formerly did at my military exit, to invoke a continuance of the blessings of Providence upon it, and upon all those who are the supporters of its interests, and the promoters of harmony, order, and good government.

That to impress these things, it might among other things be observed, that we are *all* the children of the same country—a country great and rich in itself—capable, and promising to be as happy as any the annals of history have ever brought to our view. That our interests, however diversified in local and smaller matters, is the same in all the great and essential concerns of the nation. That the contrast of our country, the diversity of our climate and soil, and the various productions of the States, consequent of both, are such as to make one part not only convenient, but perhaps indispensably necessary to the other part, and may render the whole (at no distant period) one of the most independent in the world. That the established government being the work of our own hands, with the seeds of amendment engrafted in the Constitution, may, by wisdom, good dispositions and mutual allowances, aided by experience, bring it as near to perfection as any human institution ever approximated; and, therefore, the only strife among us ought to be: who should be foremost in facilitating and finally accomplishing such great desirable objects, by giving every possible support and cement to the Union. That however necessary it may be to keep a watchful eye over public servants and public measures, yet there ought to be limits to it; for suspicions unfounded, and jealousies too lively, are irritating to honest feelings, and oftentimes are productive of more evil than good.

To enumerate the various subjects which might be introduced into such an Address would require thought, and to mention them to you would be unnecessary, as your own judgment will comprehend *all* that will be proper. Whether to touch specially any of the exceptionable parts of the Constitution may be doubted; all I shall add therefore at present, is to beg the favor of you to consider—

1st. The propriety of such an Address;

2d. If approved, the several matters which ought to be contained in it; and

3d. The time it should appear—that is, whether at the declaration of my intention to withdraw from the service of the public, or to let it be the closing act of my administration, which will end with the next session of Congress, (the probability being that that body will continue setting until March,) when the House of Representatives will also dissolve.

Though I do not wish to hurry you (the cases not pressing) in the execution of either of the publications before mentioned, yet I should be glad to hear from you, generally, on both, and to receive them in time, if you should not come to Philadelphia until the session commences, in the form they are to take.

I beg leave to draw your attention also to such things as you shall conceive fit subjects for communication on that occasion, and noting them as they occur, that you would be so good as to furnish me with them in time to be prepared, and be engrafted with others for the opening of the session.

With very sincere and affectionate regard, I am ever yours,

[Signed.] G. WASHINGTON.

JAMES MADISON, Jr., Esq.







1334.

14

**SPEECH**

OF

*Samuel L.*

**MR. SOUTHARD,**

ON

**THE REMOVAL OF THE DEPOSITES;**

DELIVERED

IN THE SENATE OF THE UNITED STATES,

January 8, 1834.

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WASHINGTON:

PRINTED BY GALES & SEATON.

1834.



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## SPEECH.



The Senate, on the 8th of January, 1834, having under consideration the report of the Secretary of the Treasury, laying before Congress his reasons for removing the Public Deposites from the Bank of the United States, and the following resolutions, submitted by Mr. Clay:

1. *Resolved*, That, by dismissing the late Secretary of the Treasury because he would not, contrary to his sense of his own duty, remove the money of the United States in deposite with the Bank of the United States and its branches, in conformity with the President's opinion; and by appointing his successor to effect such removal, which has been done, the President has assumed the exercise of a power over the Treasury of the United States not granted to him by the constitution and laws, and dangerous to the liberties of the people.

2. *Resolved*, That the reasons assigned by the Secretary of the Treasury for the removal of the money of the United States, deposited in the Bank of the United States and its branches, communicated to Congress on the 3d day of December, 1833, are unsatisfactory and insufficient.

Mr. SOUTHARD addressed the Senate as follows:

Mr. PRESIDENT: The amendment offered by the Senator from Missouri having been removed out of the way by the vote of the Senate, the debate returns upon the *reasons* of the Secretary of the Treasury and the resolutions offered by the Senator from Kentucky—and these present subjects of the first magnitude for the grave consideration of Congress.

For sixteen years, said Mr. S., the money belonging to the Union has been kept in a position selected by Congress, under the authority of law—in a depository suited to its safety, to the convenience of the Government, and the interests of the people. Within three or four months past this money has been removed and distributed among twenty or thirty State banks, in positions not selected by Congress, nor under its control, without consulting the representatives of the people, and in violation of their recently expressed opinion. The place of its former deposite was created for the express purpose, by the legislative power of the country; the places of its present deposite were not created by Congress, nor are they under its control, but chosen according to the discretion of an executive officer. The order for the change was given by the Secretary of the Treasury, under and by virtue of a construction of his powers and authority as Secretary; and it operates not only on the money now in the Treasury, but on all which may hereafter be acquired.

We have not, therefore, before us mere questions regarding the temporary possession of office. We are not to deliberate and decide upon the policy of sustaining this or that man, nor whether it is wise to recharter a bank, nor how we shall settle a dispute between an individual President of the United States and his advisers on the one part, and a moneyed corporation on the other. The questions rise higher—they affect the management and control of the whole treasure of the Union, and the construction which is, now and hereafter, to be put upon delegated powers, under the fundamental and written

laws of the land. Our decision, in its consequences, will be felt when present party conflicts shall be over—when aspirants for place and placemen shall have passed by and been forgotten; and they demand, at our hands, all the calmness of deliberation which the exciting circumstances in which we find ourselves will admit.

The Secretary, in compliance with the command of law, has submitted his reasons for the acts which he has performed; and the Senate, as a part of Congress, is called upon either to approve or condemn both the acts themselves and the reasons which are offered for their justification. We are, therefore, required to examine—

1. The acts which have been done.
2. The principles avowed as the authority for these acts; and
3. The reasons assigned as rendering them necessary and proper, *at the time.*

1. The Secretary of the Treasury has ordered the debtors of the Government, and the inferior officers under the control of his Department, to deposit the public money which may now be or may come hereafter into their hands, from the various sources of revenue, in more than twenty State banks, created by several of the States, and holding their corporate powers and authorities under State legislation. This order must, in its nature, be prospective, and relate not only to the money now in the public Treasury, but to all that which shall be acquired by the Government and people of the Union.

The terms on which it is to be received and kept, and by which it is to be secured, are found in the agreements entered into between the Secretary and the several banks—copies of two or three of which are appended to his report, and found in pages 36, 37, and 40. And as Congress has not authority over these banks, and this agreement is the security provided for the public money, its various items require examination. We must look into the agreement, or we cannot understand the nature and effect of the conduct of the Secretary, nor the situation in which the money now is.

By the first item, each bank agrees “to receive and enter to the credit of “the Treasurer of the United States all sums of money offered to be deposited “on account of the United States, whether offered in gold or silver coin, in “notes of any bank which are convertible into coin, in its immediate vicinity, or in notes of any bank which it is, for the time being, in the habit of “receiving!”

It is apparent, therefore, that they have agreed to receive *money on account of the United States only*, and not such money as, being in the hands of officers or disbursing agents, may be deposited under the provisions of the law of 3d March, 1809. If the latter shall be ordered to be placed in them, the agreement affords no protection to it. The extent of the agreement deserves attention, as it will be found that the Secretary has ordered money to be deposited there, which is not embraced in this condition. The money, also, which they are bound to receive, is not of the notes of all the selected banks, nor of any of them, unless they are convertible into coin *in their immediate vicinity*, or be such as they are in the habit of receiving at the time it is offered—in other words, such as they may choose. Notes of selected banks in Virginia, or elsewhere, offered in payment of a debt in New York, they are under no obligation to receive, and must, of necessity, generally refuse for their own safety.

The second item provides, that “if the deposits shall exceed *one-half* of “the capital stock of the bank actually paid in, collateral security, satisfactory “to the Secretary, shall be given for its *safe keeping* and *faithful disbursement*,” with a proviso that the Secretary may demand collateral security when the deposits do not exceed one-half of the capital. There is, then, no present security for the public money but the solvency of the banks. It has been placed in banks selected by the Secretary, without taking other security; and whether there is any to be given hereafter depends on the will—of whom? Of the Congress of the United States? Of the constitutional guardians of the public purse? No; but on the will of the Secretary of the Treasury alone.



And what is the value of that security, which results from the present condition and the charters of these banks? It can only be commensurate with the powers of their charters and the soundness of their condition. Do Senators know its value? Has the Secretary deigned to inform us? Did he himself know it when he acted? Are Senators informed whether there be not restrictive clauses which forbid the agreement on their part? Did the Secretary know it? He affirms that they are banks of undoubted credit, but without an examination of their charters; and, with regard to some of them, without the possibility of his acquiring the knowledge within the time in which he acted. A comparison of dates, which are before the Senate, justify this declaration. That these banks were not altogether strong and safe, is apparent from his declaration that, within a short period, "so far from being able to relieve the community, they found themselves under the necessity of providing for their own safety."—(p. 9.) And, within a few days, the stockholders of one of them have rejected the deposits; and we are told that one ground of their decision was, that they were incompetent, by their charter, to fulfil the conditions of the agreement; the others rested on the odious nature of the terms of the agreement itself.

By the fourth item, the bank agrees to pay warrants and drafts, and to transfer the public money without charge, "but the Secretary shall give *reasonable notice* of the time when such transfer shall be required." What is reasonable notice of the time when a transfer will be wanted? Who is to be the judge on this point? Suppose a transfer is directed from New York to New Orleans in five days, or in fifty; will it be deemed "reasonable?" The bank may say it is not, and there may be a failure to meet the wants of the Government, without apparent violation of the contract. There is no escape from this conclusion, but by regarding the *whole discretion* on this subject as within the *will* of the Secretary; and this would place the banks at his mercy, and under his unrestricted dominion.

The fifth item requires of the banks the performance of all "the services" now performed by the Bank of the United States, or which may be lawfully "required of it, in the vicinity of said contracting bank." They are to render these services *in their vicinity*, and not elsewhere. Thus has the Secretary made an entire surrender of all the advantages which the Congress of the United States, acting in their high legislative capacity, had declared that the Government should possess, except such as may be performed in the immediate neighborhood of these favored banks.

In the sixth item, taken in connexion with the third, there is another provision which strikes me as improper and dangerous. They authorize weekly returns from the banks, of their entire condition, to the *Secretary* and *Treasurer*; the submission of all their *books* and *transactions* to a critical examination by the *Secretary*, or *any agent* duly authorized by him, whenever he shall require it; and the appointment by him of one or more agents to examine and report to him, the banks paying "an equitable proportion of his" "or their expenses and compensation, *according to such apportionment as* "may be made by the Secretary."

There is no restriction as to the nature and extent of the examination into their *books* and *transactions*, *except* the "current accounts of individuals," "or as far as is admissible without a violation of their charters." *Transactions* of all kinds, of every character, are examinable by him or his agents. The restriction as to current accounts of individuals is useless, and worse than useless, if the reasonings of the Secretary, in the 14th page of his report, be correct. He there spurns the objection which relates to private accounts, and argues that these may be the very grounds on which action against the Bank of the United States is to be justified. Besides, what is the restriction resulting from their charters? It is not known—those charters were not before the Secretary, and are not before us.

In the appointment of agents, there is no limit, either as to numbers or compensation, but the will of the Secretary. One thousand, or five thousand dollars, may be given for the services of each. And report, at this moment,

assigns a large compensation to one designated agent, whose name creates no feeling of confidence in the purity with which his trust will be discharged.

Thus is this most important power—this unlimited control—assumed by the Secretary. The consequences of such provisions need scarcely be exhibited before the Senate. The last item authorizes the Secretary to discharge the banks “*whenever, in his opinion, the public interest may require it*”—when-ever whim, caprice, party policy, the Executive order, may demand it. This is the tenure by which the selected fiscal agents of the Government hold their offices—these the terms on which they are to discharge their duty to the public!

In presenting this agreement, the Secretary has neglected to tell us when it was executed with much the greater number of the banks. The dates of only three or four of the contracts are here. When he was about to present himself before Congress, with his reasons for the removal of the public money, was it fair to make this omission? One of these reasons is the curtailment of issues by the Bank of the United States, at a specific period. The dates of these contracts, and the action of the Department in relation to them, were necessary in forming a just estimate of the conduct of the Bank in this particular; and yet the Secretary conceals this important information, which must have had a direct effect upon the action of the Bank.

To my apprehension, it is apparent that, in ordering the deposits of the public money to be thereafter made in these State banks, the Secretary has been grossly negligent of his duty. He had not made the necessary inquiries; he acted without the proper information; and we are now called upon to justify his conduct, when it affects the whole treasure of the nation, and puts it in jeopardy. Between the 18th, when the decision was made—the 20th, when the notice was given in the *Globe*—the 26th, when the order issued—there was not time for obtaining the information and forming the contracts. Nor was one of them made before the order was given. No financier, however skilful and prompt, could have made the inquiries, and executed the instruments, which the interests of the whole people demanded on the occasion. There can be no relief to the Secretary from the fact that an agent had previously been appointed. Of that agency, and its effects, I shall be disposed to speak hereafter. His appointment could have been made only about the last of July, or first of August, but a few days before the order was given—time enough, perhaps, to inquire about some of the banks in a few of the commercial cities, but as to all the rest, from Maine to Louisiana, he had no opportunity to examine into their condition and their charters; and if he had, the Secretary, under the circumstances, could only have acted under his dictation and instructions, as agent of *the agent*. When the Secretary affirms their undoubted credit, I mean not to impeach or call it in question; but I am not willing to rely on the mere assertion of such a fact, when involving the most important consequences to the country. If he has acted as he seems to have done, he has been guilty of a gross dereliction of duty. He has made his selection, entered into his contracts, without proper caution; and then, in violation of law, taken money from the Treasury, to enable the other party to maintain its solvency, and perform its part of the agreement. Resort to illegal means to maintain the ability of the banks is a strange evidence of their competency to discharge the duties assigned to them.

There is another cause of deep dissatisfaction with this act. Where is the authority of the Secretary to make this great contract, in which millions are concerned? If he had no legal right to make it, the contract is void; and your security, such as it purports to be, is gone; and every thing in relation to the safety of the public money rests on the honor and honesty of the receiving banks. I am willing to trust them as far, perhaps, as others. But this is not the kind of security which the laws demand. If the Secretary had the authority, whence is it derived? Where is the law that confers it? I can find none. The 6th section of the act of 1st May, 1820, (3 *Sto.* 1777,) directs that “no contract shall thereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, except *under a law*



*authorizing the same, or under an appropriation adequate to its fulfilment?"* and excepting, also, for the subsistence and clothing of the army and navy, and by the quartermaster's department, which may be made by the Secretaries of those departments. Was this contract, then, authorized by a previous law? or is that difficulty to be overcome by the argument of the Secretary, that he was authorized to remove the deposits, and that "the power to remove necessarily draws after it the power to select the places where the "public money shall be deposited?" This is a *non sequitur* in itself, and does not go far enough for his justification. The power to direct the deposits to be removed does not necessarily draw after it the selection of the places in which, and the terms upon which, it shall be kept. Unless Congress have conferred both powers on the same individual, they do not exist. The Secretary, like every other officer, is but the agent of the law—to act by the law, and not without law. The duty of deciding upon the propriety of a measure may be imposed on one officer, and its execution be intrusted to another; one may be required to decide when money shall be removed, while the responsibility for its safe keeping rests upon another. This is the case in numerous instances, and in all the Departments. It is especially so in regard to the finances. The law establishing the Treasury Department gives to the Secretary the general duty of arrangement and direction, but creates other officers for execution. An exhibition of their relative duties will be required in the course of any remarks; for the present, it is sufficient to state, that the Treasurer, and not the Secretary, is the officer bound to receive and keep the money, wherever the place of safe keeping is not expressly prescribed by Congress. He, and not the Secretary, is to decide in what particular places it shall be kept, and the conditions and contracts under which it shall be kept. The argument of the Secretary, that he must select the places, is not only inconclusive, but, if true, it does not go to the extent necessary for his justification. He must not only have the right to designate the places, but he must have the right to make the contracts by which the money is to be kept. Believing that he has no such power, I cannot but regard his act as a direct and open violation of the law of the land. He was in too much haste to execute his purposes *before the meeting of Congress*, to permit him to do what his duty demanded that he should do, and in that haste assumed powers never granted, and has put your whole Treasury at hazard. You have no law nor any valid contract by which it is secured.

The extent of power and influence which this act draws to the Secretary, and through him to the Executive, upon his avowed principles, is enormous, dangerous to the interests of the people and the liberties of the country. It places all the selected banks, and through them many other State institutions, at the mercy of the Secretary of the Treasury. He may, at will, require security for the public money, or he may require none. He may require the payment of heavy expenses, and compensation for his agencies, and fasten them on whom he chooses. He may decide, at pleasure, which of them must transfer money from one extreme of the Union to another, and when and where they shall transfer it—acts which they may, and probably will, be incompetent to perform; and he may discharge them, without warning, from the service of the Government. All this he may do for causes entirely unconnected with the business of the Treasury, and in no way concerning the public interest. There is no responsibility upon him—they have no means of resistance. And his power of favoritism, in the deposit of money, distribution of duties, and compensation, is as unlimited as his power of injury and injustice; and he has every possible temptation to its exercise for the worst of purposes. Subservience to his will will become the ready and sure road to benefits. Sir, the very act is calculated to create an army of servile sycophants and supporters. Whether it will produce that result is yet to be shown. The promptness with which the representatives of some of the banks have volunteered their defence of him, and the manner in which his favor was received by at least one, gives no very auspicious augury as to the result, but too clearly indicates the effect upon their dispositions. The Secretary was



very promptly informed of "the high sense entertained by the directors of "one of the banks, of the *honor* conferred upon it by *so distinguished a mark of his confidence*," p. 37—a quick stooping to degradation.

This state of things is prescribed, not by the Legislature, but by a Secretary, and is not dependent upon and regulated by law, but by *his discretion*. And the man who presumes thus to act tells Congress that his acts are under the control of the President. He says, in effect, "I have no official will—the President may order me as he pleases—the whole is at the command of the President." If there has been a larger or more dangerous stretch of Executive power and influence, I have not discovered it. If Senators are prepared to meet the consequences of such an assumption, they have but to approve the reasons of the Secretary. The day is not long passed by, when it would have met the deep-toned execrations of the present supporters of Executive infallibility.

The law which created the Bank, which directed where and how the public treasure was to be kept, and what was to be done, did not *so* regulate this subject. The intercourse between the Government and the Bank, in relation to the public money, was fixed and authorized by law. The acts directed to be done, or omitted, were, *under it*, matters of *legal right*, not of *Executive favor*. The law was paramount and triumphant. There was no temptation to favoritism or corruption. But, under the recent innovation, while such unlimited powers are exercised by the Secretary and the Executive, there must be favoritism and corruption. I have no faith to bestow on the purity of individual virtue, acting without law, in the midst of such temptations. Much less can I approve of conduct in a Secretary so violative of all law, and leading so directly to encroachments which are dangerous to the liberties which we enjoy.

Mr. President, another act of the Secretary, in connexion with the removal of the deposits, and in pursuance of the same purposes and objects, is the order to public officers, and agents who are in possession of public money, under bonds for its faithful disbursement and safe keeping, to place it in the banks designated by him. In a communication to the President of the 5th of October, 1833, page 40, the Secretary states, that "he *has* designated certain "local banks," but without naming them, in certain cities, "as depositories of "the public money," and that "arrangements are in progress to make a "similar change throughout the United States;" that "public money, when "placed at the disposition of a public officer, in order to be applied to the "public service, remains the money of the United States while it continues "in the hands of the disbursing agent, and is, consequently, *subject to the "control of the Secretary of the Treasury, as to the place of its deposit.*" And he thereupon proposes that all such money shall be deposited in one of the banks having the deposits of the public money, if there be any such bank at the place of disbursement, and the nature of the disbursement will permit. The proposition was approved on the same day, and a circular addressed to the other Departments for their direction.

Whence does the Secretary draw his belief, that money in the hands of an agent, for which that agent has given bond and security, and for the disbursement and safe keeping of which he is accountable, is public money which *he* has a right to control, and take the responsibility for it away from the agent? Where did he obtain this authority? Is it in virtue of his high office? He has, by this order, placed all the disbursing officers under the control and check—not of the Treasurer—not of the Comptroller or Auditor—not of the whole Treasury Department—but of himself and the President alone. He has also thrown the hazard of loss on the Government. If the disbursing officers obey the order, and the money shall be lost, the loss must fall upon the Treasury, or gross and shameful injustice be done to them and their sureties. Suppose a case—and it may be fact and history more than supposition—that there are several large disbursing officers in Washington, who have kept their money in the Patriotic Bank, and they have been compelled to transfer it to the Bank of the Metropolis, and it should be lost, either in whole or in part, by the failure

or depreciation of the latter—what must be the consequence? The release of the officers to the extent of the failure. No honest Government would compel them or their sureties to suffer: it must fall on the Treasury. They are not left to judge of their own interests and responsibility, but required to place their money in a bank which the law did not create for that purpose, and which the law does not control for that purpose. Nor has the Secretary bound these banks, by his agreement, to receive or take care of this money. It is neither “entered to the credit of the Treasurer,” nor “deposited on account of the United States.”—p. 39. He has looked neither to the responsibility of the bank nor the agents. Is there not, then, absurdity, illegality, if not gross oppression, in the act? He seems to have no limit to assumed power over the public treasure, and no guide but the disposition to pour every thing into the lap of the favored banks.

But he here also seems to have violated positive law. By the 4th section of the act of the 3d March, 1809, paymasters, pursers, and other agents are directed, when practicable, to keep the money in their hands, “in some incorporated bank, to be designated for the purpose by the President of the United States,” &c. The President alone has the power of designation, and they are to obey his order, and his only, when he shall give one. Here the Secretary declares that he himself *had* designated some banks, and it is not known whether the President was even informed which they were, and that he was proceeding to select others; and the order is that the agents shall make their deposits in such as he had selected, and in whichever he might select. It was an order to place their money wherever the Secretary might please, and to change it when he pleased. Was this a performance of the duty of the President under the law? He may perform his duty through the instrumentality of his subordinates in the Departments; but if he is commanded to do an act, does he obey the law when he authorizes a subordinate to do as he pleases; approves what he has done, without knowing what it is; and sanctions beforehand whatever he may do in relation to it? Is there no longer any authority in law? Is every thing swallowed up in Executive discretion? I admit, sir, that this and a hundred other laws in our statute book are folly and arrant nonsense, if the doctrine recently contended for be true—that the President, in virtue of his authority to see the laws executed, has a right to look to *all* cases of *discretion* in Executive officers, to command them to obey his will, and to dismiss them if they do not obey it. He might as well, under that doctrine, and without the aid of law, not only order agents where and how to keep their money, but when and how to obey the orders of a Secretary in regard to it, and discharge them for neglect. But that doctrine is unsound. It is the essence of despotism, the substitution of a single will in place of the will of the whole; and whenever it shall be approved by the American people, they will be slaves, who may sing pæans to their despot over their chains, but they will not thereby render them less strong, nor, in the end, less galling.

But, Mr. President, the Secretary has not been satisfied with his orders for the disposition of the future revenue of the nation; but he has drawn money out of the Treasury, and used it without regard to legal provisions. He has given drafts, not signed by the Comptroller of the Treasury, to the Union Bank of Maryland, for two or three hundred thousand dollars; one to the Girard Bank for half a million; another to the Bank of America; another to the Manhattan Bank; and another to the Mechanics' Bank; each for the same sum, amounting, in all, to more than two millions of dollars. How much more may be in the same situation we are not informed. Senators will find in the appendix to the pamphlet on their table (pages 43, 44, and 45,) a correspondence explanatory of this matter. *When* these drafts were made and issued we do not precisely know. The Secretary, in his “reasons,” did not condescend to inform us respecting them. He concealed the facts. I considered it, when his reasons were read to the Senate and I saw the correspondence of the Treasurer and Cashier—I consider it now—as a disingenuous concealment of an important fact, not merely useful, but indispensable, in forming an opinion in regard to his conduct. He gave orders to draw more than two



millions of dollars out of the Treasury, and yet does not inform Congress that he had so done. He plays a game of hazard with your money, and does not think it of sufficient importance to apprise you of it, or recollect that respect for you and your control over the Treasury demand an explanation. We have however learned, without the aid of the Secretary, from another source, that these drafts were made, or at least some of them, and in the hands of the cashiers, about a month before the 5th November last. As to their *character*, we are informed, not through the Secretary, but by the letters of the Treasurer of the United States to the cashier of the Bank of the United States, that “*they were not of the usual kind;”* “*they were issued by direction of the Secretary of the Treasury, to be used in the event of certain contingencies, upon failure of which they were to be returned to the Treasury, and cancelled.*”

And in the recent report of the Secretary, of the 30th December, in answer to a call made upon him, which has been read, but which, being in the hands of the printer, we have had no opportunity of examining, it is stated that “*he has transferred money, in some instances, from the Bank of the United States to the selected banks, in order to enable them to defend the community against the unwarrantable attempts of the Bank of the United States to produce a state of general embarrassment and distress.*”

They were, then, drafts, signed by the Secretary and Treasurer, for the money legally deposited in the Bank of the United States, to the amount of two millions three hundred thousand dollars, placed in the hands of the cashiers of several banks, to be used by them, if they saw fit. They were to be used on certain contingencies. What contingencies? They were not explained to us. Who was to judge of those contingencies—the Secretary? No; the banks. What security had the Secretary that they should not be misused? None. They were in the hands of the cashiers. Payment might have been demanded, and the money squandered; or the cashiers escaped, and no possible claim could have been sustained against the banks under the agreement, or against the securities on the cashier’s bonds. The banks could not be answerable until the money was received by them, and credited on their books; the conditions of the cashiers’ bonds embrace no such trust. The Secretary has drawn, and authorized to be drawn, out of the Treasury between two and three millions of money, and placed it, without security, upon the contingency of certain individuals, believing that the Bank of the United States improperly pressed the community, (a fact on which he was not to decide,) to be used, if, in the management of the business confided to them, they should think that they were pressed, or be unable to relieve the community. What a precious guardian over the Treasury of the country! What respect has he shown for the provisions of law!

These two millions and more were held by the cashiers of those banks to support their credit. It was a *loan* of so much of the public money for that specific purpose. Can any man make more or less of it? It was to pay no debt. It was to meet no claim against the Government. It was to do nothing which the laws of the Union had directed. It was a *loan*, to be used or not, at discretion of the parties, to sustain their credit, and enable them to transact their business.

Has the Secretary of the Treasury a right to loan two or ten millions of dollars for such a purpose? Are Senators prepared to say that such a power is in his hands, and to approve its exercise—and *such* an exercise—without the pretence or affectation of security? Suppose one of these cashiers had, during the month, drawn the money and escaped; the Bank of the United States would have been discharged for that amount, and even the cashier’s bond would not have been broken. Your money would have been cast upon the waves, with no hope of its being drawn to the shore again. Your resort might, perhaps, have been to the bond of the Treasurer of the United States. The money was still on his books as belonging to the Government, as he tells you, and he was responsible for it until legally discharged; but you would have speedily found a credit given. It might have been done with much less disregard of law than has been exhibited.



If such acts be approved, you have no guard upon your Treasury. The President or the Secretary may permit a cashier to draw from it millions upon millions of dollars; and, if he escape, your only remedy is like that against the deserted soldier—to mark him “*run*.”

But, sir, in what an aspect does this present the Secretary of the Treasury before us! He first performs an act, highly questionable, to use the mildest phrase, in ordering the accruing moneys to be deposited elsewhere than Congress directed, and then performs this illegal act. To guard against the natural consequences resulting from his own improper conduct, he comes before us and apologizes for this act, by telling us that he had done something else which rendered this unavoidable.

If such things can be done under our present laws with impunity, if Congress and the people of this Union have been so utterly negligent as to leave the public Treasury thus exposed, it is time that the evil was repaired, and stronger guards thrown around it. But, in my apprehension, Congress and the people have not thus neglected their duty. There are guards enough to prevent a Secretary from thus thrusting his hands into the Treasury, and scattering it to the winds. Not the want of law, but the violation of law, has produced these results.

The argument of the Senator from Kentucky was conclusive and irresistible, to my mind, on this point; and I do not wish to detain the Senate by a feebler and more tedious exposition. The constitution, in sec. 9, art. 1, has solemnly declared that “*no money shall be drawn from the Treasury but in consequence of appropriations made by law*.” The law organizing the Treasury Department, on 2d September, 1789, immediately after our Government went into operation, in the fourth section, declares, “That the Treasurer shall receive and keep the moneys of the United States, and disburse the same, upon warrants drawn by the Secretary of the Treasury, countersigned by the Comptroller, recorded by the Register, *and not otherwise*.” These drafts are direct violations of both the constitution and the law. They were to take money out of the Treasury; they were not in consequence of appropriations made by law; they were not to pay debts or to satisfy appropriations or claims; they were not signed by the Comptroller, nor in the forms of the law.

It is true, sir, that a boast has been made, and not now for the first time, that new guards have been thrown around the Treasury in these days of reform, (or whatever else it suits the partisan to call it,) and that the Treasury is now more secure, on this account, than in former times. What are these new forms—new guards? It is said that a change has been made in the warrants; that now all the proper officers sign them; and that they are sent with the name of the Treasurer; so that no fraud can be committed. A short explanation will show the fallacy and deception of this boasting. The act establishing the Treasury, as we have seen, prescribes the mode and manner in which the officers are to sign, to draw money out of the Treasury. From the moment of the passage of that law to the present, as I believe, the form of warrants has been substantially the same, unvaried in substance, and in strict conformity with the law; containing the name of the payee, sum, appropriation, &c. signed by the Secretary, countersigned by the Comptroller, recorded by the Register, and signed by the Treasurer. No alteration has taken place in these respects.

After the officers, with the Treasurer, had signed them, either the warrants themselves were delivered to the claimants, or sent for them to the place of payment; or, in place of the warrants, checks of the Treasurer were sent. To the branch bank here the warrants usually went, and were returned to the Treasury on weekly or other settlements; to places at a distance the checks or warrants were sent as was found most convenient. In both cases, however, the Treasurer either kept the warrants, or they were returned to him, on settlement with the paying bank, *and he kept them as his vouchers*. The only difference of which I am aware, that has been made, is that, in 1829, the Treasurer was directed always to send the warrants; and thus they

are in the custody, for a time, not of the Treasurer, whose vouchers they are, but of the bank which pays them. It is only a difference as to the party who is to hold the voucher, until a settlement has been made. But as to security, there is no difference. Nor was it a matter of the slightest consequence, so long as the Bank of the United States, created by and responsible under the law, received, and paid, and kept the warrants. Now, I ask, where is the extraordinary merit of this luminous invention? Four years ago we heard it sounded, from Maine to Georgia, as evidence of skill and paternal care over the Treasury, and watchfulness against fraud; another reason for deep personal devotion to a man who knew no more of the matter, at the time, than you or I. Of such stuff, sir, is popularity sometimes made; and such are the trifles, lighter than air, imposed on partisan credulity.

The drafts of which I have spoken were a violation of the constitution and the law, and were given in despite of these warrants, not only in their original but their amended shape. These new and boasted guards against petty frauds were insufficient to protect your Treasury against the more stupendous inroad of Executive—discretion. They might prevent the filching of a few dollars, but could not restrain the unlocking of the Treasury, when millions were to be subtracted.

These drafts also violated the agreement between the Bank and the Treasury Department, made by Mr. Crawford in September, 1819, by which a notice of thirty, sixty, or one hundred and twenty days was to be given, when money was to be transferred to different places—an agreement which has not, I believe, been insisted on by the Bank in ordinary cases. They were secret drafts—a fact which this officer had not the courage, or, if he had the courage, had not the candor, to state to Congress. They were to be paid upon sight, instantaneously, whenever the holders chose. A demand for more than two millions might have been made upon the Bank at any moment; and, if not instantaneously paid, it must have been dishonored, and the pure and generous purpose avowed by the agent accomplished. And now, sir, the Bank is charged with dishonesty for guarding against it. It knew—it could scarcely fail to know—from the plainest indications, that drafts were out; but their amount, and when and where they would be presented, was not known, and could not be, unless the Secretary, or one of his subordinates, had given the information. It was concealed, because the object required concealment. And when, under such a state of facts, the Bank prepared to meet the blow of its covert enemy, fall *when* and *where* it would, it is accused by the Secretary of misconduct, and a violation of its charter. The accusation is worthy of the maker of contingent secret drafts. Sir, if this conduct be sustained, you have no guard upon your Treasury. Your President and Secretary may take from your vaults whatever they please, and when they please, and dispose of it where they please, and you have no remedy. I repeat the inquiry—are Senators prepared to justify the act?

The apology made for this violation of law and duty is, that they were *transfer drafts*. What, Mr. President, is a transfer draft? It is this, and nothing more. A direction from the Department to the Bank to send a particular sum of public money from one place to another, where the Government needs it. If it has money in Philadelphia, which it wants in Lexington or Norfolk, it is a direction to send it to Lexington or Norfolk, that the checks or warrants of the Department may be paid there. It is a draft, simply designed to change the *position* of the money, but not to change the *custody* of the money. In its change, and in its new location, it remains under the same custody, upon the responsibility of the Bank, and so continues, until it is drawn from its new location, in regular warrants from the Department, for the payment of debts. If lost in the transfer, in passing from one position to another, or after the transfer, and before it is paid out, it is the loss, not of the Government, but of the Bank. The transfer itself is the act of the Bank. It may be directed, but it is not and cannot be performed, either by the Secretary or by the Treasurer. They may, as we have seen, draw money out of the Bank; and, after it is drawn out, use it as they please,



and violate law while they do it; but under the charter, the Bank must make the transfer. It is a gross *misnomer* to call these drafts transfers. Who ever before heard of a transfer draft to change money from one side of a street to another? from one end of a town to another? to take money from one bank to loan to another to sustain its credit, or enable it to do even the high and meritorious act of *protecting the community from oppression*? Drawing money out of the Bank, or Treasury, for any purpose, is no transfer. The Bank loses its possession. It is a payment by it—a payment of money out of the Treasury; and then the responsibility for loss falls, not on the Bank, but on the Government. A transfer can only be made while the same legal responsibility exists before, at, and after the transfer. These contingent drafts were *payments* of so much for the Government; and these payments were not made in the forms, nor according to the requirements of law. Sir, they may be called by any name that our *contingent* Secretary may select; but he ought not, by giving wrong names, to be permitted to deceive the public. He has violated the plain requirements of law, and should be held responsible for it. The law is ample to guard the Treasury; it requires only to be faithfully administered. It is proper here to remark, that all these contingent drafts were not used; a part was returned to the Treasury. They were made, it is said, to sustain the selected banks, and protect the community from the pressure of the Bank of the United States. Now, if it was proper to draw them for that object, and if the Bank has continued its oppressions, as is hourly alleged, why were they not all used? Does no more pressure on the community exist? Has the Bank done no more evil than that which could be repaired by two millions of dollars? Is the Secretary sincere in his exhibition of the conduct of the Bank? Has he power to use the public money to resist it? and does he use only a part, when he might arrest wrong and oppression by using the whole? Was that his object? *Credat Appella!*

Before I pass from this subject, I must be permitted to remark, that the *time* which the Secretary chose draws none of my respect towards him or his act. He knew at the time that he could not complete it before the meeting of Congress. He is even now, while we are deliberating, pursuing his object, and completing his arrangements. He *knew* that Congress would not approve the removal. For three years the question respecting the Bank has been agitated in various forms; and at the *last session* this very subject was brought before Congress on the controlling recommendation of the President, and when his political friends were in a large majority; and Congress refused to yield to his wishes, and declared the deposits safe. Yet, in less than six months afterwards, the Secretary spurned their opinion, and did the act, and now comes to Congress to approve the contempt which he has heaped upon them, and expects fawning for the kick which he has given them! Sir, why did he thus scorn the opinion and will of Congress? It was, sir, that another, and, if possible, more signal act of scorn for the legislative power might be exhibited to the world. The deposits could not be removed by the joint action of the Executive and Legislature, without a *majority* of the latter in favor of the removal. But if that was made by the authority of the President or Secretary alone, they could not be restored; as a single word, *VETO*, would prevent that majority from accomplishing their wishes. Two-thirds would then be required; and this, the word, the wishes of the President, and the force of party, would prevent. The act was therefore done; done before the meeting of Congress, for the sole purpose of preventing Congress, the majority of Congress, the Representatives of the people, from exercising their judgment and powers in relation to this question, and the management and control of the public treasure. It needs no development of the guilty purposes of guilty agents to see that this was the governing motive in selecting the *time*—for the haste with which the removal was made. In sixty-six days, Congress, authorized by the constitution and laws to decide this matter, would have been in session; and the act, I repeat it, was *then* performed to prevent the action of Congress. Sir, the power of Congress has been scorned—disregarded; and, through them, the people whom they represent, abused. A



trick, a cunning device, has been resorted to, to cheat the legislative power of the country of its rights. Those whom the people appointed guardians of the public treasure have been defrauded of their constitutional authority. The Secretary knew that Congress was approaching. Why, then, did he do this act? Why does he now insult Congress by continuing thus to act, while we are here to attend to our constitutional duties? Search the records of history, from the earliest times to the present, and you can find no act of lower cunning, or haughtier scorn, by any usurper, towards the legislative body. Who, before this, has ever dared thus to condemn the power which the people had, by their solemn charters, bestowed on their Representatives? None, sir, none. If it be the will of the people thus to surrender their own powers in the hands of their constitutional Representatives, and justify the trespass upon them, so be it: I will not be accessory to the justification. If the charter of the Bank were to expire in fifty days, it would be due to the relative powers of our Government, and the honor of Congress, to order their immediate restoration.

THURSDAY, JANUARY 9, 1834.

Mr. SOUTHARD continued his remarks as follows:

Mr. President: I yesterday attempted to present my views of the *acts* performed by the Secretary of the Treasury, and of the laws and principles applicable to them; and made some remarks on the *time* selected by the Secretary as calculated to prevent and avoid the action of Congress. The purposes of the Executive have been confirmed by subsequent acts. Within a week, while we are deliberating on this question, we are told, that orders have been issued forbidding the Bank, or some of the branches, to pay the pensions; and transferring this service to others. It was originally assigned to the commissioners of loans, and the agents for paying pensions by the act of the 4th August, 1790. It was afterwards transferred, by law, to the Bank of the United States, by the act of 3d March, 1817. By this transfer, the Government was relieved from an annual expense of not less than forty thousand dollars. The Bank is now forbidden to perform the duty, and the Executive, *of his own authority*, or his subordinate, has constituted the selected banks *Commissioners of Loans and Agents* for this purpose. The law expressly commanded what is now forbidden. Your statute is repealed, and official duties imposed by Executive mandate. I ask for his legal authority. I demand to know if there is to be no limit to these trespasses upon the Legislative power? An attempt to transfer these duties was made three or four years ago, resisted, retracted; but is now repeated in more offensive form, as the natural result of the previous misconduct in removing the depositories.

I have stated that a large amount of money had been drawn from the Treasury, and distributed among the favorite banks. Surely, at a time when the Secretary was loaning the public money so freely, all the Departments of the Government ought to have been full-handed, without need of pecuniary aid. Yet it so happens that one of those Departments, without authority of law, has borrowed, upon six per cent. interest, more than four hundred thousand dollars. By a report of the Postmaster General, just laid upon our tables, we are informed that he has borrowed, since the 28th December, 1832, \$350,000, which is unpaid; and \$50,000 more, which has been paid; and overdrawn to an unascertained amount, but supposed, *by estimate*, \$50,000 more; and we all know that contracts with the Department are unsatisfied, to a great extent. The *time* when these loans were made, and the banks by which they were made, are worthy of observation, as explanatory of some parts of the conduct of the Secretary.

One hundred thousand dollars were loaned of the *Manhattan Bank*, between 28th December and 1st April, *while Congress was in session, and immediately after its adjournment*. For four years preceding this event, Congress and the country have been regularly assured, *even by the President himself*, that this Department was in a flourishing condition, and managed with great economy

and skill, by a most faithful officer; and those who doubted or denied were denounced in no very measured terms. At the opening of this session, in that very month of December, when a part of this money was borrowed, the President assured Congress, from the report of the Postmaster General, which he transmitted, "that that Department continued to extend its usefulness, without impairing its resources, or lessening the accommodations which it affords in the secure and rapid transportation of the mail." Sir, have Congress been fairly and honestly dealt with on this subject? Has not imposition been practised? I do not say intentional, so far as the President is concerned. He may have been, and probably was, utterly ignorant of the true state of facts. But the truth has not been told; the people and Congress have been deceived. While praises were bestowed, and we were ordered to believe them, *that Department was insolvent*. And *while Congress was in session*, it borrowed money, without the permission or knowledge of Congress, and in disregard of law and duty.

On the 28th April, 1833, \$50,000 were borrowed of the *Western Bank of Philadelphia*. On the 5th June, \$50,000 more of the *Bank of Maryland*. On the 25th October last, at the time of the loan by the Secretary of the Treasury to the banks—on the 1st November, immediately after the Secretary's loan, \$50,000 of the *Commonwealth Bank of Boston*; and on the 31st December last, four weeks after Congress was in session, \$100,000 of the *Manhattan Bank*.

Some of these, perhaps all, are among the favored banks. Some of them held the contingent drafts, and others were in correspondence with the agent of the Treasury, when these loans were made by the Postmaster General. The time, on which the Secretary dwells so emphatically, is no longer to be wondered at. It corresponds well with the wants of the Government, if it does not with the rights of the Bank and the interests of the community. Are these things to be tolerated and approved? Sir, the fraud of this whole matter is stupendous and appalling; the disregard of law, and contempt of the legislative branch of our Government, intolerable. Are Senators prepared to approve it all by their votes?

Having looked at the acts of the Secretary, it becomes necessary to examine the principles which he avows, and the reasons he has given for their justification. It is due to him, and much more to ourselves and our institutions, that this examination should be full and rigid.

I must be permitted here to remark, that, in my examination of these principles and reasons, I have not permitted myself to regard the question before the Senate, as an issue between the President and the Bank of the United States. If the President on one side, and the Bank on the other, have formed an issue, let them try it. It does not become the Senate to try it for them, or to become a party to it. We are not to look at the consequences upon an individual, whether he hold the office of President or not. To the incumbent of that office, who is speedily to pass from power, it can avail little, personally, unless he acts under strong passions and prejudices, and seeks the perpetuation of official power in the hands of favorite partisans. We are not to look at the consequences to this Bank, except so far as its rights may have been assailed by a violation of the terms of its charter. It will soon cease to exist, if it be not the will of Congress that its existence be prolonged for the purposes of the Government—and that will be a question of magnitude and difficulty enough for the day when its decision may be required. But we are to look to the effects upon the Government and institutions of the country, and the rights and interests of the people. We are investigating principles and reasons immensely more important than the interests or wishes of any President and of the Bank combined—of a magnitude deeply affecting the future well-being of a great nation. The supremacy of the law, the sacredness of the constitution, the rights of the people, are matters concerned in the issue before us; and we are to look to it that these do not suffer by the misconduct or the malignant passions of rulers.

I propose to admit, for the present at least, that the reasons offered by the Secretary are sincere, and that he acted upon his own judgment, not by the



command of his superior. It requires, indeed, some faith to make the admission, when we reflect upon the argument of the Senator from Kentucky, and add to it the language which we find in the letter of Mr. Duane, of the 23d September, that he "was to consider himself directed to act on the responsibility of the President," and that, if he would stand by him, it would be "the happiest day of his life." It requires still more faith, when we compare the paper read to the cabinet with the reasons of the Secretary. The language, the ideas, the facts, the reasoning, all indicate a common origin—the dictation one head—be that head whose it may, whether the President's, the Secretary's, the agent's, or some unknown person. Without stopping to inquire either into the similarity or parentage of these documents, or into the feeling which could have produced this state of happiness on accomplishing such a purpose, after such a life of usefulness as he has led, and the acquisition of so much glory as we are assured that he has won, I take the act as the Secretary's, and the reasons as his justification. If he has acted incorrectly, the mandate of power can furnish no apology.

The Secretary assumes, without proof, certain principles as true. If they are false and unsound, no system of honest logic can deduce safe conclusions from them. He creates some difficulty in their examination, by a confusion and alternation in the use of the terms "Secretary of the Treasury," and "Treasury Department," as if they conveyed the same meaning. There is great distinction between them. The Treasury Department is a creature of the law and the constitution, and consists of several officers, whose separate and respective duties are prescribed; of whom the Secretary is but one, and with no more undefined and unlimited powers than the others. Each has his sphere of authority and service; and neither can properly interfere with the rest, except in the mode and to the extent which the law has established.

In page 2 of the report, it is affirmed that "the Treasury Department 'being intrusted with the administration of the finances of the country, it 'was always the duty of the Secretary, in the absence of any legislative provision on the subject, to take care that the public money was deposited in 'safe keeping, in the hands of faithful agents, and in convenient places, ready 'to be applied according to the wants of the Government.'" The principle, thus announced, in its length and breadth, is unsound. If it be true that the Treasury Department is intrusted with the administration of the finances, does it follow that the Secretary alone is to perform the high functions thus claimed, *in the absence of legal provision?*—that he is to discharge important legislative powers and duties? Certainly not, unless the law creating him authorizes it. He doubtless means, that the power claimed is a necessary emanation from the nature of his office. 'It pre-existed the Bank charter, and was reserved by it. If Congress do not legislate respecting the 'places of deposit and safe keeping, he must supply their defects.' With all the respect which I can feel for the Secretary, the position seems to me to be absurd, and an assumption of undelegated authority. The act establishing the Department, and creating his office, gives him no such power. [Here Mr. S. read the first and second sections of the act of 2d September, 1789; the first establishing the Department, the second creating the office of Secretary, who was to be deemed head of the Department.]

Does this claimed power arise from the first duty enjoined "*to digest and 'prepare plans for the improvement and management of the revenue, and for 'the support of public credit?*" He is but to digest and prepare the plans, not to execute them. They are to be sanctioned by Congress, and their execution to be directed by Congress—the high legislative power which is to determine respecting the revenue.

From the second—"To prepare and report estimates of the public revenue, 'and the public expenditures?" The same comment applies to it.

From the third—"To superintend the collection of the revenue?" The revenue itself, and the mode of its collection, must, of necessity, be directed and prescribed by the Legislature; and the Secretary can have no duty in regard to it, but to superintend its collection in the prescribed mode, and see that the will of Congress is obeyed and executed.



There are other duties mentioned in this section; but they can have no connexion with the power claimed by the Secretary. From what branch, then, of his official duties does the power arise? From none. It is as purely a legislative power as any which ingenuity can devise—vested in Congress, of a high character, and with which no inferior officer can interfere, except so far as he may be expressly directed. Such direction is not pretended. All his general authority exists in that law. His office has neither been enlarged nor contracted from that day to this. He seems to have forgotten that he is the creature of the law, with such capacities as it gave—that he is not *the Department*, and has not all the power vested in the Department, but that there are other officers with their powers and duties. One of these is the Treasurer, and to him this very duty of safe-keeping is expressly assigned. The fourth section requires the Treasurer to “*receive and keep*” the public money, and compels him to give bond in \$150,000, that he will receive and keep it safely. Like all other officers and agents, who hold public money, he, and not the Secretary, is bound with sureties, “to take care that the public money is deposited in safe-keeping, and in the hands of faithful agents, and in convenient places, ready to be applied according to the wants of the Government;” which wants may be indicated to him through the Secretary. *Place* is a necessary part of keeping; if it fails in safety, the officer—the Treasurer—must answer for it, unless the law directs the place, and then the officer is not responsible.

The history of the Department corresponds with this view. Before any place was designated by Congress, the Treasurer kept the money where he saw fit, and was answerable. When the Bank of the United States was chartered, in 1817, Congress required that it should be deposited in it, and for its safety, while there, the Treasurer is not bound to answer. But if, from any cause, it be taken from thence, without the order of Congress where it shall be kept, the rights, and duties, and responsibilities of the Treasurer revive; and in their exercise he cannot be controlled by the Secretary, who may, indeed, direct him that the Government needs the money in any given place, (as Baltimore, for instance,) but for its transfer and keeping there, until used for the Government, he must himself respond. An order from the Secretary to place it in any given situation, or to let it out of the place prescribed by Congress, can be no protection to him against the forfeiture of his bond. The contingent and other drafts which removed the money were not legal authority. If the money be lost, his bond is broken. Such, if he had consulted them, would, I am confident, have been the advice of the two Secretaries who preceded the present one.

The power in dispute is a legislative power—purely legislative. Congress has the right to say who shall exercise it; and, having granted it to the Treasurer, it is a usurpation by the Secretary, for which no reasons can apologize, no necessity excuse. He has assumed the very essence of legislation—to deal with, to control, to manage, the purse of the nation. And even if it be proved that the power was executive, it would not relieve him. An executive power, to be exercised, must be conferred; if not conferred on *him*, he has no right to assume it. But, sir, the Secretary proceeds to tell us, in substance, that this power was reserved by the Bank charter, without limitation or restriction; that Congress cannot interfere with the subject until he has acted; that, in his action, he is to judge of the general interest and convenience of the people; that, although the money is safe in the Bank of the United States, yet, as it has violated its charter, it was his duty to remove the deposits; and that the President has the supervision and execution of the laws, and therefore a right to control him in the duty which he has to discharge in relation to this law.

This is a simple statement of his opinion; and it will be at once perceived that, as he considers his right original, from the nature of his office, so that of the President results from his general authority to see the laws executed.

‘The right is reserved by the Bank charter.’ Then it existed before the Bank charter. It is unlimited and without restriction. Then Congress has

no authority of interference. The Secretary expresses his wonder that Congress should have given him such a power. In this wonder I cordially join him, if his notions have any resemblance to the truth. But I am aware of no such surrender of power by Congress to him or any other executive agent. His error is, that he has assumed, without proof or argument, that which did not exist. And I must here be permitted to remark, that, while the Secretary complains of the Bank enlarging its discounts, in order to compel Congress to recharter it, he assumes this ungranted power, and exercises it, to compel Congress to act in unison with his views, he turns round and does an act, which he believes, and which is boasted of before the whole nation, as changing the deliberation of Congress from the question of removal to that of restoration; as compelling the majority of Congress to yield up its rights, and subjecting it to the veto power. Whether the complaint against the Bank be well founded or not, the assumption of the Secretary is unpardonable. And if his complaint be true, Congress has been, between these conflicting parties, placed in a predicament neither honorable to its character, nor salutary to the exercise of its powers, unless it shall firmly sustain its own authority, which I trust it will do. The constitution and laws demand that it should.

With regard to the supervision of the Executive, I remark, whether the Secretary acted under the command of the Executive or not, his own responsibility is not changed. His responsibility is created by the law, and can neither be thrown upon nor assumed by another. "The President commanded, and I did it"—"Do, and I will protect you, and it will be the happiest day of my life"—are no apology or justification. They do not, in the least, remove the guilt of misconduct. The President *cannot*, under our laws, and agreeably to our system, take upon himself that which the law has laid upon another, whatever may be his choice or his desire. There are only two modes in which responsibility and its consequences can be removed from a guilty agent. One, where the commander, at the head of his forces, with sword in hand, protects his subordinate—a mode better fitted for Eastern despotisms than American liberty; the other, where he possesses popularity so overwhelming, that, when he says a thing, it is therefore believed; when he does it, it is therefore applauded. Such a man may say "Do, and I will protect you;" my approbation shall be sufficient to make others approve; my popularity shall be your shield. I will admit, sir, if it will be any gratification, that no man who ever lived had better right to say, I will take this responsibility on myself. We have seen enough to assure us that before his popularity, even constitutional principles have given way in men who were deemed honorable and honest. None ever made his followers change opinions more rapidly. None ever trampled on covenanted rights more, and found more ready sacrifices in adulation and applause. But, sir, let us beware. It is that very kind of popularity which leads most directly and easily to the prostration of liberty. It is the paved road to despotism, which offers no obstacle to the progress of the victor.

Mr. President, if there does now exist in this country a power which can, by its single volition and word, relieve officers acting under the constitution and laws from their responsibility, and this with regard to the Treasury itself, we already have an absolute, unencumbered despotism, beyond which no other can advance. What is despotism, but the existence in the hands of a single individual of the power and right to say to all subordinate agents, you are to act on my responsibility, and by my opinion? Can the Russian go further? Can the Turk? Are Senators prepared to sustain the principle? If they are, and it be sustained, we have had a revolution already; "hitherto bloodless," as the Senator from Kentucky has remarked, but it will not in its continuance be bloodless, when the people, amidst throes and convulsions, shall seek the restoration of their rights.

Sir, if the language to which I have adverted can be used to your Secretary, it may to your Comptroller, your Register, your Auditor, your Treasurer; and the Executive can dispose of the treasure at his will. Every possible obstacle is removed from before the vaults of your Treasury. I have always



understood the system of our Government, and so I have read the short but eventful history of my country, that it was the fixed purpose of those who fought for, and of those who created, our institutions, so to arrange them that the purse and the sword should be forever disunited; and the Executive should not, by possibility, touch or control one dollar of the public treasure, unless he was not only permitted, but commanded by law. There was not, during the periods in which our State and General Governments were formed, one single approved opinion which did not recognise this doctrine. Separate the purse and sword!—separate them!—was the language of those times—their union is despotism! This principle is on every page of our history, and was intended to be carried out in the formation of the legislative and executive branches of the Government. Their powers were defined as much with this as any other view.

And, sir, the law creating the Treasury Department was formed in the same spirit. It was necessary—could not be avoided—to leave it, in some sense, an Executive Department; but every provision was inserted which could tend to make it subservient to the Legislative, and not the Executive will. The Department of State, created in July, 1789; the War Department, created in August, 1789; and the Navy Department, created in April, 1798, are purely executive. The officers at the head of the two former are commanded, in the same words, to “perform and execute such duties as shall, from time to time, be enjoined on or intrusted to them by the President of the United States, agreeable to the constitution.” relative to matters pertaining to their Departments. The officer at the head of the latter was commanded “to execute such orders as he should receive from the President of the United States,” relative to matters connected with the naval establishment. And they all communicate with the President, and not with Congress. The Legislature makes its calls in regard to their duties, and gives its orders through the President, and receives their answers, and the reports of their conduct and situation, from him. Not so the Treasury Department. It takes care of the public money. But how? As the Legislature directs. It disburses the public money. But how? As the Legislature commands. It reports the state and condition of the Treasury, and the situation of the finances. But to whom? Not to the Executive, but to Congress. Congress calls for information, plans, systems of finance. But on whom, and through whom? Not on or through the Executive, but immediately and directly upon the Secretary. He is required to look to the disbursement of the public money. But by whose orders? The President’s? No, sir, no; by the command of law. He cannot himself take one dollar out of the Treasury, but in the forms prescribed—the countersigning of the Comptroller; the record of the Register; the signature of the Treasurer; and “*not otherwise*”—words useless in the construction of the act, except to show the rigor, and caution, and anxiety of those who framed it, in regard to the use of the public funds, and their desire to prevent all Executive interference with the Treasury. Why was not the bond to receive and keep the money given by the Secretary, if he was meant to be the keeper of the money? Why are all who hold and disburse money required to give bonds, if the Secretary can dispose of it as he pleases? Why did the Treasurer select his own places and agents for keeping the money before Congress prescribed the place and the agents, if the Secretary had the power? The design of our laws is obvious; the relative duties of the officers is apparent. They must not be set aside and repealed, because the Secretary may imagine that the interest and convenience of the people demand it. Of that interest and convenience Congress, and not the Secretary, will judge. If one dollar of the money drawn out shall be lost, the tribunals of the country will teach the Treasurer that he, and not the Secretary, must find it; and the Executive mandate will be insufficient for his protection. The design and the words of the constitution and the laws, in separating the Treasury Department, as far as practicable, from Executive control, will in them meet its just illustration and support.

But it is said that this course of reasoning is of no avail, because the Presi-



dent has the power of dismissing all except judicial officers, and, therefore, has power to discharge the Secretary, unless he thinks as the President thinks, and acts as the President directs; and that, by this means, he has control over all the actions of all the officers under the Government. Is this, sir, true? Is this power of dismission thus supreme and irresistible? If it be, it is a strange anomaly in a free Government, and under free institutions; and no time should be lost in erasing it.

I do not mean, at this time, to discuss the *existence* of the power of dismission, or to question its constitutionality. The resolutions do not seem to me to call for it; and the time may shortly come, when we shall be driven to the investigation, by an imperious sense of our obligations and duties. It is the practice under it, and the principles and motives by which its exercise should be regulated, if it does exist, to which I would call the attention of the Senate.

It was first brought into discussion on the organization of one of the Departments, in 1789. Parties were divided upon it, and then first measured their strength and intellect. The majority of the Federalists were in favor of its existence in the President alone, without the co-operation of the Senate, the co-ordinate power in appointments. The Anti-Federalists, afterwards called Republicans, were opposed to its existence, and believed they saw danger in its exercise. Gerry and others pointed out, with the spirit of prophecy, the malignant use which *might*, and, in corrupt times, probably would, be made of it. Madison and others, in the purity of their own hearts and purposes, did not believe in the danger. They thought that its exercise, for any motive but the support of law, and the faithful administration of official duties, would justly subject the President to impeachment. They did not foresee the coming events which were to take place at the close of forty years from that day. There was not then a man in the Congress of the United States who believed that this power could or would be used for mere personal or party purposes, for personal or party revenge; much less to obtain control of the Treasury of the country, by the discharge of the officer placed over it by Congress, because he would not consent to exercise his discretion in the mode which the President might dictate, and within seventy days of the meeting of Congress.

The Federalists prevailed in that discussion by a small vote, and the practice since has been in conformity with the decision. The power has been exercised by all the Presidents, but to a very limited extent, except by the present. In no instance—by none of them—upon the avowed ground that none but personal partisans of the President should be permitted to hold office, that the triumph of party drew after it, as its appropriate incident, the dismission of incumbents who did not join in the elevation of the single occupant of Executive power, although their merits were undisputed. Sir, this is an odious enlargement and perversion of a questionable power. The spoils of party, thus secured, are the triumphs of corruption over virtue and the constitution. The power of dismission, if to be exercised at all, should be exercised for *competent cause*; and that competent cause must exist in the law, and by the commands of the law; must be connected with the actual discharge of the duties required by law; to prevent the performance of acts expressly forbidden by law; to secure the performance of acts expressly commanded by law; to relieve from fraud and mental incapacity to discharge the duties arising under circumstances which could not otherwise be controlled. It is, perhaps, a useful, but temporary agent, to guard against evil, until the legislative body, in its several branches, shall be enabled to act. But where discretion is vested by Congress in an agent, it can never, with propriety, be applied in such way as to control the will of Congress—to take from their agent and trustee the right to judge of their wishes and intentions. The Executive can never say *how* the officers of the law shall discharge their duties. If it exercise the power of dismission, it must be after and for their acts, and to remove them from doing further mischief.

If the President may say to *one* officer, you must do your duty in this or that mode, he may so say to every other. If to a Secretary, then to a mar-

shal, who holds his office by the same tenure. And by like exercise of authority as that which we are now considering, he may direct a marshal *how* he shall execute his writs, and whom he shall summon on juries; and thus, not our Treasury only, but our fortunes, reputations, lives, are in his hands. Where, then, where is our security?—where our protection?—where our legal liberties?—where the trial by jury, the last and most efficient guardian of the citizen in his dearest interests? It is subject to the control of power; its value is destroyed; it is gone forever. There is no right or privilege which this construction of the power of dismissal will not reach. It changes all the provisions of your laws into the will of one man; you have remaining only a theory—a pretence of freedom, with the essence and practice of tyranny. You may boast of your liberties, but they are in the hands of an individual. You may pass laws, and define the actions of your officers, but the execution of the laws will not be regulated by yourselves, but by the whims, the caprice, the passions, of one man; and all your purposes may be defeated by his word. Unite to this construction of the power of dismissal the exercise of the veto, which the constitution has granted, and human ingenuity cannot devise a purer system of unrestrained, unlimited power. The Executive has swallowed up the Legislative functions, and there remains but the feeble barrier of the Judiciary, which must speedily fall before it. Are the People of this country—I ask with the earnestness which I feel—are they prepared to sanction such doctrines—to meet such results? If they are, they are already prepared and fitted for slavery. Will Senators sustain such principles?

If the exercise of this power be now permitted, it will be no apology to after-times, to posterity, that we believed the existing President would not abuse it. It is not necessary for us to assert that he would. We settle principles, not with reference to any one man and his merits, but to the principles themselves, and their effect upon our institutions and liberties. Besides, who knows who shall succeed, or the extent to which the successor may carry this dangerous power? There is not a man on earth to whom I would confide it, in the extent now claimed by the advocates of the Executive. And if, at this moment, there be party devotion strong enough to sustain it, then is your Government already revolutionized. The conclusion of my own mind, and which I desire to convey to those who, with myself, are to decide this question, is, that it is an abuse of power by the President to dismiss an officer charged by Congress with a trust, because he will not consent to execute it by the Executive standard of construction—because he does not do the will of the President, but the will of Congress; and I regard such an act, not as a triumph over a Secretary, not as a triumph over a Bank, the mere creature of the law, but as a triumph over the law itself; a triumph over the rights of the People; a triumph over the constitution and laws of the land.

But I return to the power which the Secretary says pre-existed in him, as Secretary, and repeat, that it could not pre-exist in him, because there was *no absence of legal provision*; for it was given by law to another officer. The Treasurer, *in the absence of other legal provision*, is bound “to receive and keep” the money, and to select the places of deposit, as a part of receiving and keeping. He must keep it safely; the places must therefore be on his responsibility. If the power existed before the 16th section of the Bank charter, it existed in the Treasurer, and not in the Secretary.

I recur again to the principle of the Secretary. He says, it is a power *reserved*, without limitation or restriction; of course, it is not created nor enlarged by the Bank charter. It is now what it was before that law was passed. He argues, that this charter is a contract; that there is no limitation to the power in its words; and that—what?—therefore that there is *no limit to his power, nor to the motives by which he shall be governed in exercising it*.

If this be true, as respects the Secretary and the United States’ Bank, it is true in no other instance in law, usage, or the concerns of human life. In construing contracts, whether general in their words or not, we confine ourselves to their objects, and do not go beyond the subject-matter to find motives for construction or action. We are governed by the intent of the parties, and by what they have respectively agreed to do; and our construction



must be reasonable as regards both, and not such as may suit the convenience or interests of only one of them. If they have confined their contract to certain specified objects, we cannot look to other objects to find reasons to govern our decision upon these. If a party performs the conditions of his contract, no conduct of his, in relation to other matters, can affect our decision. The trustee, or umpire, who is appointed to decide upon a contract, and admits that its terms have been kept by one of the parties, and yet decides against him because he has acted incorrectly in matters which are not mentioned, exceeds his authority, violates his duty, disregards the injunctions of law, and acts dishonestly. In the instance under consideration, where there are mutual covenants by the Government and the Bank, and the Secretary is authorized to decide in relation to one of them, there is no principle of common law or common justice which will authorize him to look beyond the covenants, out of the contract, to find motives to govern him. The parties meant, honor and good faith require, that his action should be confined to the terms and objects of the contract. He must look to them for his motives, and the grounds of his action. He must make a decision, reasonable in its character, and equally regardful of the rights and interests of both.

Any other individual, *not in office*, might have been agreed upon by the Government and the Bank to perform the duty of deciding upon the removal of the deposites. Does any man imagine, will any man affirm, that he would have been at liberty to find motives out of the charter for his decision?—to have exercised an unlimited license, which should be regulated by feelings or objects, not embraced within the contract?—to have subjected himself and his actions to the will of the President alone?—that his power would have been unlimited and unrestricted, except by the wishes of the Executive, and that they should conclude him? I cannot persuade myself that one Senator would maintain these propositions. Then why shall they be maintained in relation to the Secretary of the Treasury? Is the contract changed by the fact that he is the individual agreed upon to perform the trust? The logic which shall sustain the distinction will merit admiration for its ingenuity, but not applause for its support of law or morality. It is precisely because it is a contract—and one, too, of a high and solemn character, affecting the faith and honor of the Government—that the Secretary is not permitted to take its words alone, without regard to its objects, and infer a license of action and decision which knows no restraint. He was bound, by every principle of fairness and duty, to look into the history of that contract; to examine the purposes of the parties; and to limit himself by its spirit and intentions, and by the *actions of the parties in relation to its stipulations*.

The Secretary could not act correctly without doing this, nor can Senators truly estimate his conduct without a similar examination. I hope the Senate, therefore, will bear with me, while I make a brief reference to the history and objects of this contract, with a view to just conclusions upon the Secretary's principles, and reasons, and actions. The contract is the charter of the Bank of the United States, *created by Congress, of its own unsolicited will*, to accomplish certain defined and specified objects of national interest—the *whole* of those objects being perfectly understood and explicitly stated.

It was unsolicited by those who subsequently became interested in its provisions. None of them applied for it—none asked it as a favor to them. It was a voluntary act of the Government, so far as they were concerned, though not voluntary, I admit, in relation to the necessities of the Government itself. It was forced on Congress, but not by the stockholders, as the best mode, in their opinions, of removing the evils under which the nation was at that time laboring. It was suffering incalculable injuries from the insecurity, and inequality, and unsoundness of the currency, and from the want of a fiscal agent to aid in the financial action of the Government, and to manage its pecuniary concerns with advantage. To remove these evils, some modern quackery, some combination of State banks on safety-fund principles, or something else of that kind, might have been resorted to; but the wise and discreet men who then filled public stations were not skilled in



such devices, and they determined to create a Bank with a capital competent to the objects, and bound to exert its influence to remove the suffering, and perform the fiscal action which was necessary. In 1815, they formed a charter, with these objects. The then President, Mr. Madison, returned it to Congress, with his reasons for not approving it. He waived his constitutional objections, but returned the bill on the ground that it would not answer its objects, in restoring a sound currency, and performing the duties required of it by the Government. At the next session, the public difficulties had increased to an alarming extent; and there was no alternative, action could not be postponed, and the present Bank was created, designed to effect two objects. 1. The restoration of a sound state of the currency; 2. The management of the concerns of the Treasury—the creation of a fiscal agent. To effect these, Congress prescribed its own terms; and held out to all the people of the Union a pledge of its faith, that if they would subscribe to the Bank, and undertake the responsibilities which it imposed, the benefits of that charter should be fully and faithfully yielded to them. All those who chose did subscribe; Congress offered—it is not too much to say, solicited them to undertake it. Shall it now be said that for slight causes—for any causes but a failure to keep the contract on their part—that these subscribers shall be deprived of their benefits?—that there is an unrestrained license in the Secretary of the Treasury to disregard the objects of the contract, and, looking without it, to cheat them of their privileges whenever he pleases, and for whatever cause he pleases? It would be worse than *Public Faith*. Congress is bound, in honor, to prevent it, if attempted by any officer, for any cause but a violation of the agreement; and that violation established by law in the mode agreed upon by the parties.

The benefits offered were, the act of incorporation, by which their joint funds might be used for their profit; a partnership by the Government to one-fifth of the whole amount and relative proportion of directors; and the deposit of the public money, on which they could discount while it remained there. The duties demanded on the other hand, were, to pay one and a half million of dollars; to pay specie; restore the currency—an Herculean task; to keep the public money safely, and furnish it for the Government wherever it was wanted, from one extreme of the Union to the other, without expense or loss. There was no added condition, that the owners of the stock should surrender their rights as freemen, should be of this or that party, should support this or that man for President. Congress presented no such terms then, and it will be false to itself if it permits them to be prescribed now. The terms of the contract were all explained, and I know of no honest or just principle which can justify a refusal by the Government to fulfil the conditions, and leave the public moneys in the Bank, so long as the Bank shall fully satisfy all that it promised to perform as the terms on which it was to keep them. The bargain was offered by the Government, made by the Government, and must be kept by the Government. Whether it shall do so is of comparatively little moment to the personal and pecuniary interests of the stockholders. By bad faith towards it, a number of orphans and widows, and the helpless, may be injured, and their wrongs be remembered in the account against national injustice; still the great mass of stockholders can probably bear it without much suffering. But this evil is swallowed up, and may be forgotten, in the more extensive injuries which will result from violated faith, from disordered currency, from lost confidence, at home and abroad.

The Bank was bound to the performance of certain duties; if it failed, a remedy was provided in the contract. After it had discharged them, it had a perfect right to seek its own profit, by all fair and honorable and legal means. It was bound to do so, on every correct principle. The Government itself, as a partner, had a right to expect it. It appointed its directors to look to this object; and it was for this, and this only, that they were appointed. Not to take care of the deposits—not to give secret information—not to be spies and informers—not to control the whole management of the

Bank, and complain if their opinions did not prevail. They represented one of the partners; and the sole effect of their dissatisfaction should be, if Congress concur with them, to sell their stock and cease to be partners—not to withdraw the deposits, while they were safe, and all the duties of the Bank, in relation to them, fully discharged. The interest of the nation in the stock, and the propriety of leaving the deposits there, are constantly confounded by the Secretary, the directors, and others; but are distinct in their nature, and the principles applicable to them. It may be wise in the Government to sell its stock, when it finds it to be its interest to do so; and yet every regard for good faith may require that the deposits remain. Mismanagement—less profits than might fairly be made—might justify the one, but not the other, if *the deposits be safely and correctly used.*

The Secretary, acting for both parties, or for Congress alone, could not properly reason otherwise on this subject than Congress should reason; and he ought not to have confounded the stock with the deposits, in his action, as their representative, or trustee, or umpire. Did it occur to those who passed the law, or to those who subscribed, that the concerns of the Bank were to be regulated by these directors, and its transactions governed or influenced by them, further than their opinions and votes would reach? Did it occur to them that they were to act as informers, under *Executive appointment and order*?—secret spies, who were to give information to the President, without the rest of the directors being aware of it? Sir, no man would have subscribed his money on such terms. No honorable mind then dreamed of such degradation of principle and action. On the contrary, Congress and the subscribers knew that it would be important and necessary, at some periods, for the Government to be informed respecting its proceedings and transactions, as they would affect the stock, the deposits, and fidelity to the terms of the charter. They therefore expressly provided modes in which this knowledge should be acquired—by monthly and other reports, by committees of Congress, by agents expressly appointed for that object. But they did not provide for placing the directors under the secret orders of the Executive, to make partisan reports and partial statements, on such facts as they could secretly obtain, without the knowledge of the other directors. There are ample means in the power of the Government to know every thing which is done, and which is either proper or important to be known, without their humbling the Government directors, by turning them into agents, to discharge the lowest services to which men can be degraded. The very order to the directors to do this service, was a trespass on the rights of the Bank—a violation of the contract.

Mr. President, has the Bank performed the conditions of the contract? If it has, the Secretary had no right to take away the deposits, no matter how unlimited the words by which his power is recognised. That it has performed them fully, amply, there can be no just question. I am not its advocate or apologist. To almost all who have ever been in its direction, I am a stranger: with not five of them have I been on terms of intimate acquaintance. I have never had a dollar from its vaults, and never but once have I been within its walls. I have no cause for partiality towards it, and have never been affected in my interests by it, except in the way that every other citizen of the Union has. I am here to pass upon its rights; to do justice, and nothing more; and to this I am bound by the highest and most solemn earthly obligations. And I cannot perceive in what it has failed to comply with its engagements to the Government. It has fulfilled them all, and more. It has paid the million and a half of dollars into the Treasury; it has transferred the funds of the Government wherever it has been requested, without risk, without expense. More than three hundred millions of your money has passed through its hands, without the loss of a single dollar. It restored your currency, in four or five years, from a depreciation of from five to twenty per cent., until Congress, by its committees, have declared that it was as sound as that of any country. All its duties have been performed, all the facilities which the Government asked or expected have been furnished; so that Secretary



after Secretary, administration after administration, have bestowed upon it the highest eulogiums. Senators have only to refer to the documents published to the world by this body, to confirm these assertions.

In transferring your funds, it has saved millions to the Government; in restoring the currency, it has cast millions into your Treasury. By one single operation, you saved between six and seven millions. It received twelve millions of State bank notes in 1817; and you promptly paid, by that means, nine millions of debt several years before it could otherwise have been discharged. The Bank of Columbia gives an example of this process, and of the losses to which you would have been subjected. It owed you more than a million of dollars; about one-half was transferred to the Bank, and immediate credit given for it, and the Bank has thereby lost more than \$100,000. It became trustee for the balance, to collect it for the joint benefit of itself and the Government. There is, perhaps, \$100,000 still due, on which you may yet lose \$150,000. And you will lose all—if I am correctly informed, every dollar—which was not so transferred. It was by a process similar to this, in other cases, that this abused Bank restored your currency, and saved your money.

Sir, it is now, even when the Secretary assumes the discharge of his high power, admitted by him that your money in the Bank is safe. It is admitted by all, even by the reader of the state paper to the cabinet, that the deposits are safe—nay, too safe: for there is too much specie in its vaults. Where, then, is the failure in performing the covenants which can justify the removal? Shall we adopt the doctrine of the Secretary, and say that any motive, any object, may justify the act, whether connected with the conditions of the contract or not? In what an odious light this principle exhibits Congress! As a mere cheat, sir! The amount of the argument is this, and this the language which Congress must use, if it approve the act: It is true, we offered you the deposits to tempt you to enter into the contract; you accepted; but we cunningly inserted a provision that our agent might deprive you of them whenever he chose. We promised you the benefit of them, but we used such language as to permit us to trick you out of them whenever a Secretary could be found to order their removal. You have, it is true, kept your contract, but that is of no importance; we shield ourselves under the words of the agreement, to avoid performing ours. Sir, it is mockery. The approval of such reasoning would exhibit a depreciated standard of public and private morality, which I hope does not yet exist.

But the Secretary does not stop here. As if to add to the insult, he claims the power to remove the deposits, whenever, in his judgment, *the convenience and interests of the people require it, in any degree*. He is thus constituted the judge of the interests and convenience of the people, and the slightest reason is to justify him in violating the charter, when the faith and honor of the Government may be implicated by the act. By what rule is he to judge? The convenience of the people! It is the stale apology to which tyrants and usurpers have always resorted for the violation of the requirements and sanctions of law. The Secretary says the Bank cannot complain. Now, as there are two parties to the contract, if the Bank cannot complain, let the Secretary do what he pleases, has Congress any right to complain? If one party must be silent, must not the other also? And did the Bank believe that, by its charter, such power was granted to the Secretary? Did the Senator, then a member of the other House, who drew this section, believe it? [Mr. WEBSTER. No—certainly not.] Did any of those Senators, then members of that body, who voted for the act, believe it? Not one. They all regarded it as a solemn contract, to be kept, like all other contracts, in good faith by one party as well as by the other; and never imagined that the Secretary, under the general words used, could violate it at will.

Sir, it is necessary that Congress should look to their legislative rights. A power has been claimed over the whole Treasury of the Union. The control of that Treasury is one of the highest legislative powers granted by the people to Congress. It cannot, must not, be construed away. There are, indeed,



those who believe that a surrender of this control would be utterly unconstitutional and void. The argument, it will be observed, stands thus: By the contract, the Secretary has unrestricted power to remove, or not to remove, the deposits. Congress cannot act until he has acted. The Executive has a right to control the Secretary; and thus Congress has surrendered its legislative power, and cannot exercise it, except at the will of the Secretary or Executive. Now, sir, I have by me an opinion, given in relation to a grant by a State Legislature of exclusive powers to a company, to construct railroads within defined limits, and to prevent competition: an extract from which I will read, although I do not concur in the conclusions of the writer:

"It must be acknowledged that there would appear to be high authority for regarding this power as an incident to the power of legislation. In the act of Congress, incorporating the Bank of the United States, there is an agreement, on the part of the United States, not to authorize any other Bank out of the District of Columbia, during the existence of that charter; and similar pledges may be found in similar cases, in the legislation of different States, where the constitution has not expressly conferred on the Legislature the power to make them.

"But, with every respect for the distinguished men who have sanctioned such legislation in the General Government, or in the States, I cannot think that a legislative body, holding a limited authority under a written constitution, can, by contract or otherwise, limit the legislative power of their successors. The power which the constitution gives to the legislative body must always exist in that body until it is altered by the people, and cannot be restricted by a mere legislative act. If they can deprive their successors of the power of chartering companies of a particular description, or in particular places, it is obvious that, upon the same principle, they might deprive them of the power of chartering any corporations for any purpose whatever; and if they might, by contract or otherwise, deprive their successors of this legislative power, they could surrender any other legislative power whatever in the same manner, and bind the State forever to submit to it. The existence of such a power, in a representative body, has no foundation in reason or in public convenience, and is inconsistent with the principles upon which all our political institutions are founded. For if a legislative body may thus restrict the power of its successors, a single improvident act of legislation may entail lasting and incurable evil on the people of a State. It may compel them to forego the advantages which their local situation affords, and prevent them from using the means necessary to promote the prosperity and happiness of the community."

This extract was not written by R. B. Taney, Secretary of the Treasury, but by R. B. Taney, Attorney General of the United States, within twenty-one days of the date of the order for the removal of the deposits.

Mr. President, the Secretary, under the charter of the Bank, holds a mutually delegated trust, which he is to execute, according to the meaning and objects of the contract, for the benefit of both parties, and upon principles which are applicable to all officers and to all official duties, to all powers and to every trust. The original power of the legislative body still remains the same. The sole intention was to create an agent, which, in the absence of Congress, might guard against danger. But neither Congress nor the Secretary has a right to violate the conditions of the charter. Congress would not, and it is our duty to arrest the Secretary in his attempt to do it. But the Secretary endeavors to sustain his course by a resort to precedent, to usage, and practice. I have not yet had the benefit, on this point, which would arise from reading his answer to the resolution offered by the Senator from Kentucky, just printed and laid upon our tables, and may not have all the light which that answer will afford. But I present to the Senate what I believe to be the truth in relation to this subject. The Secretary offers one, and only one, authority, and that is the *postscript* of a letter from Mr. Crawford to the Mechanic's Bank of New York, of the 13th February, 1817, as proof of the usage and practice of the Department. I have not been able to find, in

the history of that postscript, enough to show that even one Secretary of the Treasury has entertained the opinion expressed by the present, much less to justify or apologize for him on the ground of usage.

The Bank was chartered on the 20th April, 1816. The subscriptions were made in July, 1816, and it went into operation in January, 1817. Before the subscriptions were made, and before the close of the session at which the charter was granted, and also before the charter went into operation, while Congress had full control over the subject, a joint resolution, with the force of law, was passed, requiring and directing the Secretary to adopt measures to cause, as soon as might be, all duties, taxes, debts, &c., payable to the United States, to be collected and paid, in legal currency, Treasury notes, notes of the Bank of the United States, or notes of banks payable in legal currency, and fixing the 20th February then next (1817) as the day after which the payments ought to be so made. The object of this resolution was the restoration of specie currency; and Mr. Crawford was directed, as a means of restoring it, to require payments to be made in the mode prescribed. Under this resolution a large correspondence took place between the Secretary and the State banks. They had resolved to endeavor to restore it by the 1st of July following; it was his duty and desire to restore it by the 20th February. On the 26th December, 1816, he addressed a circular letter to them, which is a guide to all the subsequent correspondence. This letter, a copy of which is before me, states that the Bank of the United States would go into operation on the 1st of January, and be ready on that day to receive the public moneys deposited in the State banks; that, before he decides on handing over these deposits, he wishes to know if the State banks will adhere to their determination not to resume specie payments until the 1st of July. If they do, he will promptly order the deposits to be paid over; but if they resume by the 20th February, the day fixed by Congress, no part of the deposits shall be transferred, unless to sustain the Bank of the United States from any pressure attempted to be made upon it. And he closes by stating, "that there exists no reason to expect that the resolution of the last session of Congress, relative to the collection of the revenue, after the 20th of February next, will be rescinded." It will be perceived, at once, that this circular relates to the restoration of specie payments on the 20th of February; that it is written under, and by virtue of, the resolution of the 30th April, 1816, and not under the charter of the Bank, which had not then gone into operation; that the whole authority for the letter was the power granted and the duty enjoined by the resolution. It will also be perceived that it relates to the money then in deposit in the State banks, and not to money which had been deposited in the Bank of the United States, and which was to be withdrawn from it. To these deposits, the Bank, when it went into operation, made claim, and requested the Secretary to transfer them. He admitted that there was justice in the claim, but as it was not absolutely required by law that he should transfer them, and as it was important to use them in the best mode to enable the banks to resume specie payments, he declined; and it is to these deposits that I understand the postscript of Mr. Crawford to apply. The Mechanics' Bank was one of those which found difficulty in breaking the arrangement for the 1st July, and wrote to the Secretary on the 9th January, 1817, soon after the date of the circular, and in answer to that circular, stating the grounds on which they could not comply with the proposition of the Secretary to resume on the 20th February, and adding, if the resolution should not be rescinded or altered by Congress, they would reconsider their decision. It was in relation to the propositions and difficulties suggested by this letter of the Mechanics' Bank, and to the propositions which were in debate between the Bank of the United States, the State banks, and the Secretary, about the transfer of the deposits previously made in the State banks, that the letter and postscript of Mr. Crawford, of the 13th February, 1817, was written. They had no relation to deposits made in the Bank of the United States, nor do they furnish any assertion of authority by Mr. Crawford to touch deposits accruing after the charter went into operation.



The body of his letter expressly refers to the circular; and the assertion is, of a right to transfer those deposits to equalize the benefits, in the efforts making by the banks to restore specie payments. It is too explicit to have been misunderstood by the Secretary, if he had examined it with proper caution, and adequate knowledge of the operations of the Treasury at that time. The letters and documents to which I have referred may be found by Senators in document 140, being an answer of Mr. Crawford to a resolution of the House of Representatives of the 8th May, 1822; and I think I may affirm, with confidence, that the postscript relied upon does not sustain the Secretary in the course which he has adopted. Whether he has been able to find any other sayings of Mr. Crawford, or of some other Secretary, which will give plausibility to his assumption of power, we shall discover when we read his recent communication. In the mean time I refer Senators to Mr. Crawford's letters of 28th February, 1817, and 17th March, 1817, and his report of the 27th February, 1823, giving an account of all the transfers made by his directions from the date of the charter; and I think the conclusion from them will be found to be irresistible, that he did not claim even to select the banks in which deposits were made; and that his transfers were either from State banks to State banks, or of the old deposits; and, above all, that he did not claim the unlimited power which has been recently exercised.

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FRIDAY, JANUARY 10, 1834.

Mr. SOUTHARD continued his remarks as follows:

I am warned, Mr. President, by my personal feelings, and by regard for the time of the Senate, to contract, as far as practicable, my remaining remarks.

Mr. Crawford's opinion, as I have represented it, seems to be confirmed by his answer to the charges made against him in 1822 and '23, an occasion on which he acquired reputation by the ability with which he defended himself from a vigorous assault upon his integrity as a man and an officer. In his letter of 8th May, 1824, to the committee, he states that he had selected some of the Western banks as places of deposit, having an understanding with the Bank of the United States, and that the act was useful to it. The letter of Mr. Cheves, approving the course of the Secretary, is dated 5th September, 1819, and is full and explicit. Three of these banks, at Chillicothe, Cincinnati, and Louisville, were in places where there were branches. He omitted to report the fact to Congress through inadvertence; but he states that the Bank, "*whose interest it was the object of that provision of the charter to guard,*" had full explanation, and approved it.

The committee, consisting of Messrs. Floyd, Livingston, Webster, Randolph, Taylor, McArthur, and Owens, do not disapprove the act of the Secretary, or his reasons, but justify his conduct; and they state that a practice, which had sometimes prevailed to direct the operations of the Treasury "*to the support of different moneyed associations, whose affairs required support, to defeat combination against them, and preserve equilibrium, was no legal employment of the public funds. It was nothing but a gratuitous loan.*"

The present Secretary will derive little support from this history. But should it appear that Mr. Crawford did entertain, or that, in one or a few instances, he had acted on, that opinion, in the difficult circumstances in which he was compelled to arrange the relations of the financial department with the national Bank, and aid in restoring a sound currency, under the orders of Congress, I am not willing to receive such opinion and acts as conclusive, in the construction of the charter. As the opinion and acts of Mr. Crawford I should respect them, but not admit that they were obligatory. The general practice of the Government since 1816; the obvious principles applicable to the construction of the charter; and the opinions of Congress in various forms; are much more persuasive upon my judgment. All these have been violated



and disregarded by the Secretary. He has applied accidental and temporary arrangements, and an opinion in the postscript to a letter, to a power granted, if it exist at all, *by contract*, and which *reaches the control of the whole Treasury of the Union, at all times*. The Secretary relies on slight evidence when it concurs with his own views and principles, but is not quite so prompt to regard higher evidence when it is adverse to them. It would have been well if he had manifested equal respect for the abundant proof of the constitutionality of the Bank, and the opinion of Congress as to the safety of the deposits. The Senate has not reasoned heretofore as the Secretary reasons. The Committee of Finance in the Senate, in 1829, had several resolutions referred to them, the object of one of which was, to compel the Bank to pay some compensation for the deposits; and the *means of compulsion* were the *withdrawal of the deposits* by the Secretary. They reported that it was inexpedient to act on these resolutions; and thus reason: "The 16th section enacts, that the deposits of the money of the United States shall be made in the Bank and its branches, unless the Secretary of the Treasury shall, at any time, otherwise order and direct; in which case he shall lay before Congress the reason of such order or direction. It is *admitted*, that the first branch of the section is conclusive, as to the right of the Bank to the deposits without charge to it; but it is argued that the second part qualifies that right, and that the authority given to the Secretary to withdraw the deposits, gives him power to do so in case the Bank should refuse to give further compensation for the use of those deposits. If that had been the object, the words would have been, in the opinion of the committee, *explicit* as to a point so *very material*. The committee see, in the power given to the Secretary, a discreet precaution; and the words, they believe, convey only the idea, that if, at any time, the Secretary shall be of opinion *that there will be a danger of loss to the United States, by its money remaining in the vaults of the Bank, he may remove it for safety, and report his reasons to Congress*. No other construction can, in the opinion of the committee, be given to that part of the 16th section. The power to withdraw the funds by the Secretary has never been deemed necessary; and it may well be doubted whether Congress can interfere, in any way, until he shall act under the power. The idea that Congress have given, by inference, to the Secretary of the Treasury, a power to exact money from the Bank by a threat of withdrawing the deposits, cannot be entertained by the committee."

Of this report one thousand copies were printed for circulation.

If Congress have not given to the Secretary the power to exact compensation for the use of the deposits, have they given the more odious power of depriving the Bank of the whole deposits, whenever a Secretary can be found ductile enough to be commanded to believe that the *interest and convenience of the People* require his high prerogative protection? The committee affirm that the power was given to secure the *safety of the money*; and that committee consisted of Mr. SMITH, of Maryland, Mr. McLANE, Mr. SMITH, of South Carolina, Mr. BRANCH, Mr. SILSBEE. The same committee again, upon another and distinct reference, made the *same report* on the 12th of January, 1832. It then consisted of Messrs. SMITH, TYLER, MARCY, SILSBEE, and JOHNSTON. In each committee there was a majority of the friends of the present Executive. Sir, it is but a short period from January, 1832, to September, 1833. I find no evidence that any one of the Senate then questioned the soundness of the opinion of the committee, and shall be glad to learn, in the progress of this discussion, how far there has been a change of opinion here or elsewhere, and on what grounds.

But the *right to transfer* the deposits is urged as an *independent ground* on which the power of the Secretary is to be vindicated. It will be a sufficient answer to this argument to refer to the 15th and 16th sections of the charter. The 15th declares that, "whenever required by the Secretary of the Treasury, the said corporation shall give the necessary facilities for transferring the public funds from place to place, within the United States and the Territories thereof, and for distributing the same in payment of the pub-

"lic creditors, without charging commissions or claiming allowance on account "of difference of exchange." And the 16th requires the public money to be deposited in the Bank and its branches, where there are any. Now it is obvious that the duty of the Secretary is to require the transfers; that of the Bank to make them. He is to direct the place where the money is wanted for use; the Bank is to be at the expense of putting it there. The object of these transfers is also designated—the payment of the public creditors. The transfer and the payment are embraced in the same provision, and rest on the same condition—both to be directed by the Secretary; both to be done by the Bank; and the power of the Secretary might as fairly be inferred from one as from the other. To infer the power to deprive the Bank of the whole benefit of the deposits, at will, because there is a power to require transfers for distribution in payment of debts, is but another evidence from what slight grounds power can be inferred by those who desire to exercise it.

The power intended to be given to the Secretary was, perhaps, salutary; and there may, perhaps, have been some want of caution and precision in the wording of it; but if this be so, which I do not admit, an ample apology for Congress is found in the fact, that no one then imagined such principles of construction as have, in these reforming days, been discovered and approved. The men who had held the office before that time, Hamilton, Wolcott, Dexter, Gallatin, Campbell, Dallas, although they were versed in official concerns, and the length of their service outran that of four who have recently followed them, had not exhibited such skill in construing their powers, and those of the Executive, as to put Congress effectually upon its guard.

But, sir, if the power be conferred, and was reserved, what was it? 1. To order the *deposits* to be made. This must, from its nature, be directed, not to the Bank, but to inferior officers and debtors—where to pay or place the money; and must be prospective, and relate to moneys to be subsequently acquired. 2. The *transfer*—which relates not to change of possession in the Bank, but to a change of the place where the Bank shall hold it. Neither amounts to nor authorizes the withdrawal or taking money out of the Treasury. This is a totally different act, and governed by different laws and rules. The constitution and the law governing it have been read to the Senate. I have no anxiety about the definition of the word *Treasury*. That of the Senator from Kentucky is correct. It is that place, one or many, where the money is put, and is to remain until drawn out according to the provisions of law. In this light it is regarded in all our state papers and documents, in the messages of the President, the reports of the Secretary, the proceedings of Congress, and the laws which are enacted.

Whenever money is in the hands of the Government, has been paid to it, and not paid away, it is said to be in the Treasury. Before the Bank was formed there were more than ninety State banks in which the money was placed, and these were *all one Treasury*; and withdrawing money from any one of them was taking it out of the Treasury; and if taken out without the forms of law, if not paid on legal warrants, it was a violation of law; and so it is since the Bank was created. That is the Treasury *now*, in the same way that the State banks were before; and if the Secretary withdraws one dollar of it, with or without the Executive sanction, it is a breach of the law. The true doctrine of the Executive right to interfere with the money of the nation is this: While it is in the Treasury the Executive has no power to touch or control it. *After* it is drawn out, *according to law*, and placed in the hands of Executive officers to be expended, the right of the Executive, *such as it is, commences*. What it then is, I will not delay the Senate by examining further.

Under these views, Mr. President, of the acts and principles of the Secretary, I am compelled to dissent from him. He has, in my opinion, done acts for which he had no legal authority. His order to place the future receipts of the nation in the selected banks, his order to the disbursing agents to place their money in the same banks, and his taking the money, already in the Treasury, out of it, to *loan* to his favored banks, are all violations of the laws—gross violations—for which I can see no satisfactory excuse, in any just principles under our system of Government.



I now ask attention to his *reasons* for the removal. They seem to be composed of mistaken facts and false principles.

His reasons are of two kinds. 1. Relating to the *time*. 2. To the misconduct of the Bank of the United States. Under the first, he argues that the public general interest required it, without the delay of sixty days to consult Congress. Under the second, that it was demanded as a penalty on the Bank.

In relation to the *time*, he attempts to prove four propositions. [Report, page 11.]

The first is, that it was the duty of the *Department* not to act upon the assumption that Congress would change the law, but to regulate its conduct on the principle that the charter would expire in 1836. His reasoning in its support is in pages 3 and 4. Now, sir, I admit freely that the Secretary, like all other officers, was bound to act under the law, as he found it—as it existed. He had no right to speculate one way or the other. He was to perform his duty, and not presume that Congress would not, any more than that Congress would; and this is especially true, as Congress was about to meet, to whom the legislative power on the subject belonged.

But why would he not anticipate a renewal of the charter? Because, 1. Justice did not require it. 2. Public opinion forbade it. Justice did not require it, because *it was an exclusive privilege, at the expense of the rest of the community*, enjoyed for twenty years! Is this so? Was it so in the origin of the charter? Every citizen of the Union was at liberty to become a *partner* in the concern, on the terms offered by Congress. None were prohibited; none excluded. Those who did not choose to accept them, have no right to complain that others, who did, have derived benefit from them. I admit, with the Secretary, that the present stockholders have no peculiar right to peculiar privileges, and may not claim a renewal, except so far as the interest of the Government may be promoted by having a Bank, and it may think proper to renew this, if it have faithfully performed its duty. But if the charter were not renewed, and a new one were formed, the same state of things would exist, as now does, in relation to this point, and must always exist, while there is a Bank. It is an objection, not so much to the renewal of this charter, as to the existence of any Bank. The report of the committee of the House in February, 1832, places this matter in its true light. But, sir, who constituted the Secretary the judge of this question? Who gave him the right to discharge the duties of Congress, and decide this matter? What authority has he to say that it is or is not wise to create a monopoly? to grant exclusive privileges? that Congress ought or ought not to renew the charter? If such notions are to prevail, it might be well for us to take the advice which partisans have given—go home, and let matters be better managed without us than with us.

But has this Bank been an oppression to the community? I repeat, sir, that it is not so. You have saved, at a low estimate, from forty to sixty millions by its operations. The transactions of your financial concerns have cost you nothing; three hundred millions have been received, transferred, paid, *without the loss of a dollar*; your currency rendered *the very best ever known in any nation in modern times*; your contracts have been facilitated; the intercourse of your citizens, in all the relations of life and business, promoted and rendered easy and profitable; the very bonds of your Union strengthened, by enabling the people in the extremes of the nation to transact their business with each other, with almost as much facility as if they were embraced within the narrowest compass. Sir, I do not allude to these things as urging the merits of the Bank, nor with any view to any question hereafter to arise, as to its recharter. It has only the merit (and it is certainly not a small one) of having, faithfully to the Government and its own stockholders, discharged its duties. The credit is due to the wise men who formed the Bank as a fit instrument of benefit, both to the Government and people. But these things show that the want of justice and the expense to the rest of the community was at least a questionable ground for the confidence of the Secretary in the exercise of his discretion.



But he could not anticipate the renewal, because he says, "I am firmly persuaded that the law which created this corporation, in many of its provisions, is not warranted by the constitution; and that the existence of such a powerful moneyed monopoly is dangerous to the liberties of the people, and to the purity of our political institutions." We are left to our guesses as to the grounds of his firm persuasion. I shall not stop to inquire either when this firm persuasion had its origin, whether long since, when his political and constitutional opinions were formed, or within the last two or three years, within which time many of our citizens have felt much new and overwhelming conviction about the unconstitutionality of the Bank, and found their zeal on this topic so much augmented, and have laid their original opinions as a fit offering at the footstool of power and patronage. Nor, sir, shall I now inquire into the *correctness* of the opinion expressed. The question before us is not whether Congress have constitutional power to create this or any other Bank, nor whether it is dangerous to liberty. It has been created. It is in existence. It is the law of the land. But I do inquire by what right an officer, created by law, and bound to discharge duties under any of our laws, assumes the authority to question their constitutionality, or to found *his* actions upon *his* belief that they are invalid and void. He is directed to perform a duty under a law; engages in its performance; and then finds a motive for his conduct in the assertion that it is not binding upon him. Sir, to what will not this lead? Might not the Secretary, by the same rule, have said that the charter, the contract on which he relies as allowing to him unrestricted leisure of motive and action, was void, and therefore he disregarded it altogether, and removed the deposits because they were unconstitutionally placed where they were? It would have been equally proper, and would have saved him some trouble of argument.

But he forgot, sir, that he was exercising a power under this very law. If unconstitutional, how could it confer any power on him, or justify any action which he performed, however unlimited its words.

If the Secretary may act and reason thus, every other officer, high and low, may do the same; each may deny the validity of the law which binds him to do what he is unwilling to do. Each may, like the Secretary, assume the power of Congress, and render unnecessary the existence of the judicial tribunals. The President had better look to it: he may find his subordinates somewhat troublesome to him, with such notions. Or, are only those to act on these principles who conform to his opinions and execute his purposes?

Sir, it is quite instructive to hear this *firm persuasion* thus pronounced after forty years of our national existence have gone by, during three-fourths of which a national Bank has been in operation, and which have been not only the most fortunate, but the only fortunate portions of our financial history. The first Congress, enlightened by the counsels of Washington and Hamilton, and others who had profited by the light elicited when our constitution was formed, had no such firm persuasion, but created a Bank. Another Congress refused to propose amendments to the constitution, in order to obtain the power, principally because it already existed. Three others have passed bank laws, one of which contained a large majority of political friends of the Executive; committees of another Congress, similarly constituted, have affirmed the power. In favor of this very charter, we find the names of such men as Lowndes and Gaston, Ingham and Oakley, Pleasants and Pickering, Barbour and Stockton, Roberts and Daggett, and others, whom I might name, if they were beyond the sound of my voice. The Legislatures of more than one-half of all the States have *approved* the exercise of the power. Every President, except the present, has done the same; for even Mr. Jefferson put his signature to one or more laws to create branches, and facilitate the action of the first Bank. He did not, at least, while acting under the law, deny the constitutionality of the law, and assume that as a motive for his conduct. Every Secretary of the Treasury, from 1789 to 1833—Hamilton, Wolcott, Dexter, Gallatin, Campbell, Dallas, Crawford, Rush, Ingham, McLane, (one of the present cabinet)—all admitted, not merely its constitutionality, but its

necessity to the finances of the country. The judiciaries of most of the States have admitted it; and, above all, it has been sustained by that elevated tribunal which is the ultimate judge, whether legislation be constitutional or not—elevated, sir, not more by its constitutional powers and dignity, than by the learning, the purity, the firmness, the patriotic spirit, which have guided its deliberations and controlled its judgments, securing to it the profound homage of this and other nations.

Sir, after all this, is it not a process of unusual modesty, in a subordinate and temporary officer of your Government, to act, in such a case, on his *firm persuasion* that all these have been in error, and that a future Congress *could* not entertain opinions which have been thus sanctioned and illustrated.

We are assured, by the Secretary, that public opinion has settled this question, and that this settlement is now matter of *history*. This megrim of the brain has crept into the belief of more than one in high places. It is not perhaps wonderful that it should be fixed immovably in one spot; but that others should entertain it, and act upon it, as if it were law, to govern their actions when executing law, is not a little surprising. What is the proof which the Secretary refers to? That the issue respecting the recharter and future existence of the Bank was tendered voluntarily by the Bank, and accepted; that pains were taken to “frame the issue,” and that it was tried by the Presidential election. Is this true? Have the people of this Union, in the performance of their highest and most sacred function, that of election, descended to the degradation of trying an issue between the Bank and a candidate for the Presidency? Have they made all the great questions, arising out of their constitution, and the policy of the Government, subservient to such an issue? forgetting them all and deciding this alone? For myself, I admit no such degradation. When did the Bank frame the issue with so much care? I know of nothing which it has done, and nothing is alleged but the expenditures for printing, which are complained of; and its application for the renewal of its charter. The former were certainly not very effective means of either framing or trying the issue. If Senators will examine the accounts, they will find \$179 91 paid for newspapers; not as much, for the time, as we pay for the papers of six members of Congress; not enough for a daily paper from the States where its branches are located. They will find, I believe, \$6,453 29 for pamphlets of the highest merit, fit for the instruction of all classes, and about \$9,848 21 for reviews and addresses. This, sir, is a small sum with which to bribe a whole people, newspaper editors and all, in an election. But, sir, the answer is, that these expenditures were made with the professed, and, I see no reason to doubt, the sincere object of defending the Bank from continued, vehement, persecuting, and injurious assaults upon it; by which the value of its stock was depreciated, and the owners of that stock injured. An estimate of the injury may be made by observing the loss which the public treasury and the people of the United States have suffered. When the President and his friends first made their attack upon it, your seven millions of stock was worth eight and a half millions. It stood somewhere between 125 and 130, and the first assault reduced it so much that you lost by it \$750,000. Subsequent assaults have continued the process, and you have now lost a million. If they are further continued it will be reduced to par, and you will lose one and a half millions. Fortunately you cannot lose more; neither official vengeance nor private malignity, can reduce it below par, and bankrupt it. It is now able to pay, and must continue able to pay, its stock, in full count. If, sir, when these assaults were made, the Bank had been perfectly silent—stood still—made no effort to protect the property which it *held as trustee for others*, it would have failed to perform its duty. In private life such an agent would have been branded as faithless and unjust. Any State Bank, thus negligent, would have lost its credit and subjected itself to scorn and ruin. In what does the Bank of the United States differ from them? They are equally trustees for others. There was an equal obligation on them to protect their rights, and disprove the false assumptions on which the assaults rested.



‘But they made a voluntary and premature application for a renewal of their charter.’ If this be true, does it prove any thing more than that they mis-judged as to time, and were in too great haste to be assured of their fate? How did they know? Who had told them that this would form an issue between them and the President? Had he? No, sir. He had not. Up to that hour his final decision in regard to the Bank was matter of speculation only; and at least one-half of his friends not merely asserted that he would approve a recharter, but they actually electioneered for him on that ground. A contrary allegation was charged as a *political finesse of the adversaries of the President*. It was so in the middle, the west, and the north of the Union—every where, except where the charter was considered unconstitutional. And, sir, they were right. In his message of December ’29, he uses this language: “The charter of the Bank of the United States expires in 1836, and *its stock-holders* will, most probably, apply for a renewal of their privileges. In order “to avoid the *evils resulting from precipitancy*, in a measure involving such “important principles, and such deep pecuniary interests, I feel that I cannot, *in justice to the parties interested*, too soon *present it to the deliberate consideration of the Legislature and the people*. Both the constitutionality “and the expediency of the law creating the Bank, are *well questioned* by a “large portion of our fellow-citizens, and it *must be admitted by all that it “has failed in the great end of establishing a uniform and sound currency.*”

He then proceeds to suggest the propriety of considering whether a bank may not be founded on the *credit and revenues of the Government*. It is unnecessary to speak of the suggestions respecting the currency and a new scheme for a bank. It so happened, that the first was flatly denied, and was certainly incorrect; and the latter scouted, by even his own devoted friends, in and out of Congress. The suggestions were such, that none, or almost none, were found so brave, or so pliable, as to sustain them. There may have been many conversions since, for aught that I know. There are very operative means of producing conversions of opinions in these our days. But, sir, I put it to the candor of every man, if the President did not then say, that it was time the *question of recharter* should be *considered*:—if he did not tell the Bank so, as well as Congress and the people:—if he did not invite the Bank to have it settled, so far as its settlement depended upon *it*. It could not too soon be presented to the consideration of the Legislature. Precipitancy was to be avoided. If the Bank, on reading that message, had sent a memorial to Congress, would it not have been a compliance with the expressed wishes of the President? Would any man *then* have thought it criminal?—or an intentional formation of an issue between it and the President? Subsequent events have induced its enemies to give it this aspect. The Bank did not then apply. In December, 1830, the call was renewed. In December, 1831, it was repeated, with the declaration, that as he had done his duty in urging the subject, he would “*leave it, at present, to the investigation of an enlightened people and their Representatives.*” It was after all these calls, that the Bank did *precisely what the President had recommended*, present it to the consideration of Congress, and ask the decision of the question, and a renewal of the charter, if, in their opinion, the public interest required or permitted it.

The matter was before Congress—under its consideration—at the moment when their memorial was presented. If it was brought there by a friend, was it criminal to unite with that friend in his wish to have the question decided? If by an enemy, was it wrong in resisting the intended destruction? If for good, to aid in its accomplishment? If for evil, to ward off the blow? Was it premature, when the President, on his high official sanction, had declared that the question ought to be settled? Was it premature, when, in three annual messages, he had urged its seasonable decision? Or, sir, was it *not* premature in 1829, ’30, and ’31, because it might then have been supposed that the Bank could be destroyed; and did it become premature afterwards, when it was discovered that this object could not be accomplished, and that time was wanted to weaken the Bank by secret investigations and public



slanders, and to move the machinery of party to subserve the purposes of private and personal hostility? On what, sir, does the Secretary build his grand argument, that he was bound to *force* the Bank to wind up? Is it not the near approach of the end of the charter? And yet it was but little more than one year before, that the Bank asked to be informed whether the charter would be renewed, and that was so *premature* as to be *criminal*. It was not premature in the Secretary, in August and September, 1833, to trample on all laws to compel the Bank to wind up; and yet it was odiously premature to have the question of winding up settled in the spring of 1832. Such is the consistency and the reasoning of a Secretary of the Treasury. This whole matter is an insult to the common understanding of the people. I have too much regard for that understanding to believe that they can be deluded by its absurdity.

Up to this period; up to the passage of the bill to recharter the Bank; up to the veto on that bill by the President; the question as to the ultimate action of the President was unsettled. I appeal to history and the *records of this Government* for proof of my assertion. Did that veto change it? I admit that the President, in that veto, declares the bill unconstitutional, on account of some of its provisions, but not for want of power in Congress to create a bank. For, with the most paternal kindness and benevolence towards the ignorance of Congress in the discharge of the duties which the people have confided to them, he assures them, "had the *Executive been called upon to furnish the project of such an institution, the duty would have been cheerfully performed.*" The President—the Executive—called upon by Congress to furnish a plan by which Congress shall manage and control and regulate the finances of the country! Admirable modesty and knowledge of the relative rights and obligations of the Executive and Legislative branches of our Government!

But, sir, in all this, due regard was observed not to close up the question. For we are assured that, after the veto, "a general discussion will take place, eliciting new light and settling important principles; and a new Congress, elected in the midst of such discussions, and furnishing an equal representation of the people, according to the last census, will bear to the Capitol the verdict of public opinion, and, I doubt not, bring this question to a satisfactory result." What Congress was to bear this verdict to the Capitol? The present—that now in actual session in that very Capitol—members elected amidst those discussions—of which, sir, I am one! We were to bear the verdict! Had the Secretary heard it when he acted? Did the Executive wait to hear it? How did they know what we should say? How know, that a majority would not be of opinion that the Bank ought to be rechartered? Or that even two-thirds might not be found to oppose, on this point, the Executive will, should that will resist their views in managing their constitutional guardianship over the Treasury? Could they not wait sixty days for that verdict for which they had promised to wait? Was the country on the brink of ruin, sliding down the precipice into the gulf of irretrievable bankruptcy, that its drowning honor and perishing fortunes must be thus rudely rescued? Sir, that message was a solemn promise by the Executive to let this question be settled by Congress, and to submit to it. What else can the words mean, but that the people would consider the subject and their representatives decide it? Did the President intend to trifle with the people? To profess regard for their opinions, as expressed through Congress, and yet to scorn those opinions by his actions? Was he giving out Delphic responses? Did he "palter with us in a double sense?" No, sir, he meant *then* what he said, however ill the promise has been kept, under the influence of those who have surrounded him. The people so understood—they so believed. It was to be tested, whether, *without new arguments or new facts*, legislative assemblies, chambers of commerce, and the great majority of the people of these States, had changed their opinions upon the new lights which subservience to party and devotion to men have afforded? Nay, it was even reasonable to suppose that the President himself *might* yield his official opinions to

the deliberate, well-considered opinions of a majority of the people, and to permit their judgments to govern in this land of majorities, and under institutions which have so long sanctioned the existence of such a fiscal agent. It had been so before. Mr. MADISON had yielded his doubts, upon principles and for reasons which do equal honor to his head and heart, and which are well developed in his letter of 25th June, 1831.

He thought it was wise to regard the question as settled, after all that had occurred. He knew and felt that, under all Governments, *misera est servitus ubi jus est, aut vaga, aut incognita*. The lesson he teaches is worthy of imitation, not only from its intrinsic merits, but from the character of him who teaches it. He is worthy, sir, of the deepest homage and the closest imitation. He has devoted a long, a pure, and a useful life to his country. He has left the impress of his virtues and his talents on your constitution and your laws, in all their history; and he now exhibits one of the most dignified and lovely and venerable specimens of a philosophic and patriotic old age that the world has ever been permitted to witness.

Mr. President, the assertion of the Secretary, that this question was finally and irreversibly settled, is not only opposed to fact and to the respect due to Congress, but it is not respectful even to the character of the President himself. It turns upon the allegation, that the President was elected *because he was opposed to the Bank*. It supposes *disingenuousness* in him, in his messages to Congress; and that *this single merit*, this hostility to the Bank, was the *cause* of the preference of him by the people. Had he, then, no other merits? Was there no other cause why he should be preferred, without even remembering his opposition to the Bank? Had he rendered no services to his country; fought no battles; gained no glory; suffered no privations; made no sacrifices? Had he no constitutional principles to secure regard? No acts of reform to win favor? *Must* the people have voted for him for *this merit* alone? Does any man believe that he received a single vote on this ground, which he would not have received had there been no quarrel with the Bank? No, sir, I do not thus estimate the intelligence of the people nor the motives of their approbation and support. The President was chosen for other and stronger reasons, however unfounded and misguided I may regard them. His election was no *reason* on which the Secretary can be justified in making the great movement which affected, not our finances alone, but all the business and prosperity of the country. And he can find no apology in it, unless he assumes the odious position that the President's will is law, and his opinions the unerring guide of legislative action.

The two next positions of the Secretary are, (Rep. p. 11,) that the deposits ought not to remain in the Bank until the charter expired in 1836; and, as the *Secretary only* could remove them, it was his duty *then* to act. In relation to his exclusive power, I have said all that I intend. The reasoning of the Secretary, to be found in pages 4 and 5, as I understand it, is this: that the deposits always amount to several millions; their sudden withdrawal, at the expiration of the charter, would create inconvenience, and make the deposits unsafe, so that it could not return them to the Government; that its outstanding notes would lose their value when not received for Government dues, and holders at a distance suffer by their depreciation; that a sound currency must in the mean time be created; that this can, under his direction, be accomplished by the State banks, but could not be hastily substituted at the expiration of the charter.

Now, sir, I profess to have very little financial skill or knowledge. I have not made it the study of my life; but few and passing moments, amidst other employments, have been devoted to acquiring it. But, as I am compelled to form and express, *by my vote*, an opinion on the financial reasons of the Secretary, such views as I have must be my guide in that vote.

In the first place, it occurs to me that the Secretary has mistaken the *time* when the affairs of the Bank are to be wound up. Its charter, for certain purposes, expires in '36; but for paying its debts and calling in its claims—in other words, settling up its concerns—it has *two* years beyond that period.



The 21st section of the charter so expressly provides: "Notwithstanding the *expiration of the term* for which the corporation is created, it shall be lawful to use the corporate *name, style, and capacity*, for the purpose of suits for the final settlement of the affairs and accounts of the corporation, and for the *sale and disposition of their estate, real, personal, and mixed*, but not for any other purpose or in any other manner whatsoever, nor for a period exceeding two years *after the expiration of the said term of incorporation.*" It has, therefore, *four* instead of *two* years to accomplish the work of which the Secretary speaks, and we must apply his reasoning to the four and not to the two years. This provision, to my mind, indisputably proves the intention of Congress that the Bank should discount, should do every thing, make profit, and possess all its privileges, *until '36*; that the deposits should be enjoyed *up to that time*, and it should not be compelled to close its business transactions *before the full end of twenty years*, the time mentioned in its charter. It is a charter for twenty, not eighteen years. The time subsequently given for winding up was designed to enable it to act to the last moment, and to relieve it from the difficulties under which the old Bank labored for want of such a provision. I find in this fact, in this provision, a full answer to the whole argument of the Secretary *as to time*—a conclusive reason to believe that he has violated the intention of Congress and the chartered rights of the Bank. Congress gave the Bank twenty years, and did not authorize the Secretary, by his volition, to deprive it of two years of that time.

In the next place we must apply the reasoning to a *solvent, rich bank*; able to pay all its debts, and count down its silver and gold, on every demand. This solvency, though not long since questioned by its adversaries, is *now admitted by the President—by the Secretary—by all*. And what its difficulties in 1819 or 1820 have to do with its present condition, I am unable to discover. We are speaking of it *in 1833—now*—and what it must be in 1836 under proper management. If it were even compelled to wind up at this moment, the official reports of the Secretary prove that it is entirely able to pay *deposits—debts—every thing*, and have a *large surplus*. I need not repeat the figures in the statement of its situation on the 1st of this month. It had in bills, and notes, stocks, specie, and debts from State banks, about seventy-two millions, besides its large surplus contingent fund, and about three millions in real estate; and all the claims which could be made against it for stock, notes in circulation, and debts, did not amount, I think, to more than sixty-seven millions. It had more than ten millions of specie in its vaults in December, and that specie constantly accumulating. It has no cause to fear any attack. It can pay its debts, and restore to its stockholders their money, and much more. In winding up its concerns, and calling in its dues, its specie must, by necessity, constantly augment. It will require its payments from debtors, and State banks to be in specie, that it may answer the claims upon it at home and abroad, from creditors and stockholders.

Apply, then, the positions of the Secretary to *such* a bank, having *four* years to close its concerns; or, if you please, having only *two*.

The sudden withdrawal, at the expiration of the charter, of the deposits. How could those deposits be unsafe? More unsafe *then* than *now*? Why withdraw them *suddenly*? Why with more haste than the claims against the Government would require? But, with whatever haste, why should not the Bank be able to pay them? They must be paid before the stockholders, and the whole means of the Bank, stock and all, to four times their amount, would be answerable for them. They had in December about forty millions, subject to the payment of their eleven millions of public and private deposits. The same amount of deposits which alarmed the Secretary have been paid, and suddenly, too, by the Bank, more than once, and no bankruptcy or pressure has ensued. They never have been, and never can be more safe *than at the precise moment that the Bank closes its active business*, and no longer puts any of its concerns at hazard. It is so with all solvent trustees and agents, and must be so with the Bank. But, sir, the Secretary need not be.



disturbed by the anticipated loss of the deposits. If we may trust his own reports, and if matters proceed as they have done for the last two or three years, there will be little or no money to deposit. The augmented expenses of administration, and the insolvency of departments, will relieve us from any cause for apprehension on this subject.

Again: Should the notes of the Bank, not being received for Government dues, depreciate, and holders at a distance lose by them? The receipt of these notes by the Government is doubtless useful to their circulation, but it is not their only, nor chief value. This is already proved by the depreciated condition of the notes of some of the selected banks, at a distance from the places where they are issued. They are below par. The chief value consists in their being payable in specie whenever demanded—their circulation throughout the Union, wherever business or pleasure requires them; and because, from the nature of the commerce and trade of the country, their tendency is to the commercial cities—to the sea-board, where they will be cash, or its equivalent, to all who hold them. After new issues shall have ceased, they will and must be sought by all in the interior who have transactions upon the sea-coast. The amount of them now in circulation is stated at eighteen or nineteen millions, at this moment probably twenty millions. They form about one-fourth of the circulating medium of the country, and are never greater in amount than appears in the reports of the Bank to the Department. They will be *lessened of course* by the prudence and caution of the Bank as it approaches its dissolution, but even if they were augmented, the causes before stated would ensure their continued credit. I wish the Secretary had instructed us *how* notes thus situated can depreciate below their nominal value; or how a Bank, thus strong, would be unable to pay its deposits, public or private. Nothing but the utter and entire ruin of its debtors, and of the State banks, which owed it five millions of dollars on the 1st of January, could produce the predicted evil. It is *perchance possible* that the Prophet, and those who sustain him, may be powerful enough to occasion the fulfilment of his prophecy, but they must reach it through the destruction of the credit and confidence of the country, and the prostration of commerce, and dealing, and prosperity, in the community.

The amount in circulation is large, in itself, but small when compared with the capital of the Bank. In the reports of Mr. Crawford, several years after it was created, this point is developed and discussed. It has been greater before and since the present Secretary reasoned about it. Its withdrawal, and closing up the concerns of the Bank, will, of course be felt, whenever it may be performed, though with the utmost caution and moderation. It must be so in closing any large banking institution, or any large mercantile establishment; but, left to itself, unforced by the mandate of power, it would be less felt than the pressure which now afflicts the community. The Bank would not be obliged to withdraw from the active employments of the country, means greater than it has now been compelled to do. Its debts and credits, to the amount of the former, would but change hands, in the shape of some new circulation: and the balances due to it, be paid in specie, or what would be received as equivalent by its stockholders. The amount to which it has *curtailed its business* within the last five months has been stated at twelve millions—I know not on what evidence. The statements and the reports from the Secretary show no such fact. It has been reduced, in about that period, somewhere about nine millions—but its own circulation has not been diminished. The sum mentioned has been withdrawn from active use; for there was no substitute supplied by our financial Secretary: there can be substitute in the present state of things. The State Banks are incompetent to supply it. But, in winding up, it would not be compelled to withdraw from active use, one-half, nor one-fourth of that amount, in the same time—and these would be replaced by other circulation. What would be the value of that circulation, and how far it would subserve the convenience of the people of the country, is quite a different matter. There would be enough—its quality no man can tell. We had an example once on this point. When

the old Bank of the United States was closed, other banks grew up like mushrooms in a night, and perished almost as soon. They threw out abundance of paper—but it was not money, nor the equal representative of money. Your currency increased, in four or five years, from about forty-five to much more than one hundred millions; and the consequences on the prosperity of the people and the Government, need not be described to him who has not memory enough to recollect them, or virtue enough to desire to guard against them. Absolute, unavoidable, uncontrollable, grinding necessity compelled us to seek a remedy. It was found, by the wisdom of Congress, in the charter of this Bank, and in the restoration of specie payments—the restoration of money to the country. In less than five years, the circulation was reduced from nearly one hundred and ten to about fifty-five millions; and the effect has been told in years of private and public prosperity, until ignorance or folly blasted it. I am also unable to perceive why evils produced by the winding up of the Bank, in *two years*, in 1836 and '37, should be *greater* than in 1834 and '35? Why should they be greater, when the Bank and the country, by the regular process under the law, are prepared for the operation, than when the Secretary, suddenly and unexpectedly, forces it upon them? We ought to have been instructed upon this point.

But, sir, although I cannot perceive why these notes should be depreciated, and these evils result which the Secretary so clearly foresaw, I think I can perceive why the stock itself may not bear, in market, the same price as when the charter had longer to run, and why it will not do to judge it *now*, by "*the infallible Price Current*." As its charter approaches a close, it is not a place for permanent investments, whence fair profits and interest may be expected for years to come. It will then be an article to be purchased only at its actual transfer value. It will bring just so much, and no more, as the buyer believes will be paid to him when the stock is taken up and cancelled, and this will be the nominal value of the stock, and the proper proportion of surplus profits. But, sir, it would be quite as fair to apply the price current to the stock of a bank just about to expire, and compare it with those which have longer time to run, as it is now to make the same comparison between the Bank of the United States and others, after all the weight of official and personal hostility has been made to bear upon the former, and the Treasury of the Union has been poured into the lap of the latter. It is not strange that those who reason by such lights should reach false conclusions.

But, sir, the Secretary is to make a substitute for our legislative *fiscal agent*, and for our present *indifferent currency*. He is to perform the high duty of Congress, and prescribe a much better and sounder circulation—a much better, more economical, and efficient agent. And how? By substituting State banks, and notes of State banks, and making them receivable as the notes of the United States Bank now are. By law, the notes of the mother Bank and the Branches are received every where from those who have payments to make to the Government. An inhabitant of Maine can pay the Government, in Maine, with a note issued in New Orleans. He cannot, indeed, go to the Branch in Maine and demand specie for it, (for the note he holds does not promise to pay specie *there*, but where it was issued,) but he can pay Government dues with it. The complaint that these notes are not payable every where in specie, on demand, I should designate as absurd, if courtesy would permit. The law makes no such requirement, and no Bank, with branches so scattered, and with the commercial relations existing between the different portions of our wide-spread country, with any amount of capital, could long accomplish it. All that it can do is to provide specie for the issues at each place. This it has done. If notes of the New Orleans, Lexington, Savannah, and other Branches, were all payable in specie every where, it would put the safety and honor of the whole institution in the power of any enemy who might collect notes enough to exceed its specie at any one place. The enmity of the Treasury, or of a few individuals, would have found a ready prey under such circumstances. The run upon the Branch at Savannah would not have cost so much trouble and money. This mode of payment was



once attempted by the Bank, and a committee of Congress, of able and intelligent men, who examined its concerns in 1819, looked to this as one of the causes which embarrassed the Bank in 1819, and as injurious to the institution and the interests of the country: and committees of the House, in 1830 and 1832, sustained by the House, affirmed the same view of this matter. But charges against the Bank do not become stale. They are repeated again and again, with all the complacency of new discovery and invention.

To create an equal substitute, the State bank notes must be received every where for Government dues; those of Maine in Kentucky, those of Buffalo in Charleston. To accomplish this, either the Government itself must become responsible for these banks, or the banks themselves must become responsible for each other; otherwise the notes will be as they now are, and as they were from 1813 to 1817, at discount. The Government must receive them for its dues at par, and pay them out at the discount of from three to fifteen and twenty per cent. Individuals will only receive and pay them at their commercial value. Are we prepared to pass a law, taking upon ourselves the solvency of these banks, and agreeing to receive them, at par, from our debtors? Will the banks become responsible for each other? The misconduct of a single one might prostrate the whole. Will their charters permit it? Will their stockholders consent? Sir, neither by contract, nor by law, can the Secretary render these notes receivable every where, much less can he make them payable in specie every where. They will and must depreciate, and as the Government lost between forty and fifty millions by their depreciation in the war, and the people were annually taxed by this cause more than six millions of dollars, so will it be again in time of peace as well as war.

In saying these things, sir, I am not to be understood as intending to depreciate the State banks. I admit their general solvency so long as the business and currency of the country is in a natural and sound state. I admit also, their entire competency to accomplish the objects of their creation within the limits of action and agency which were contemplated by those who formed them. But they were intended to be local: their nature and capital does not fit them for the purposes of the Secretary; and whenever they shall be substituted, you will find them as you have once before found them. You have had annually repeated for years, in the treasury reports, an item of between one and two millions of unavailable funds. These were State bank notes, and not worth a farthing. The Secretary would soon find a repetition of this item, swelled enormously, upon his scheme going into operation.

Is it not graceless to complain against the Bank that it does not pay specie where it has not promised to pay it, and when its charter does not require it, and yet propose to substitute for it that which can neither pay specie every where, nor be receivable where it is wanted?

Is it not inexcusable that the Secretary should, *of his own authority*, attempt to substitute for the fiscal agent of the Government, *created by law*, agents heretofore found incompetent, and whose employment has created such distress in the country?

But this is not the worst of the scheme. The Government deposits its money in these banks to much more than their whole capital, and the *security is left at the option of the Secretary!* Now, what security is proposed? In the last report from the department we have a document which explains it; it is the *report from the agent* who was also the *principal*; for he was invested with full powers to make *any proposition* he pleased; and whatever he approved was adopted by the Executive.

Will the Senate hear the plan of security for the public money of the Union? Report of *Amos Kendall* to the *Secretary of the Treasury*, dated 4th September, 1833, page 11. "When asked what kind of security would be most satisfactory, I did not hesitate to say, that, in my opinion, the *personal responsibility of the directors* would be the very best. It would show their own perfect confidence in the safety and success of the undertaking, and it would not only afford the Government an ample guarantee for the safety of



“its *funds*, in addition to the capital and character of the Banks, but would satisfy the public mind. When it is seen that the managers of the State banks are willing to pledge not only the capital of those institutions, but their own property and character it will be impossible to doubt that the deposite is as safe in their keeping as human precaution can make it. It is understood that the security *intended to be offered* by the banks east of Baltimore is of this description; and in case any of their *directors* shall decline giving it, they will be substituted by some of the *richest stockholders*. In case I had failed to procure the assent of any of the banks in all of the principal cities, to the giving of security, it was my purpose to propose the payment of an interest of one or two per cent. on the average deposite, to constitute a fund to meet any possible losses. If this plan should be thought advisable, I have no doubt of its entire practicability!!”

Let the Senate, let Congress, let the people, hear and approve this plan for the safety and management of their money, illegally and unconstitutionally plundered from the Treasury—this substitution of the Executive will for legislative action. Is it wonderful that Congress was not to be consulted before this scheme of consummate folly was adopted? Is it strange that Mr. Duane should regard it “a breach of public faith,” “vindictive and arbitrary”—“not conservative or just;” as disrespectful to Congress, who were about to assemble; and who have pronounced the deposits safe; as calculated “to shake public confidence and promote doubt and mischief in the operations of society;” as “crude and unsafe;” as dangerous in the hands of a Secretary dependent for office on Executive will, by making the banks “*political machinery*,” as destructive of national credit and reputation; as designed “to promote selfish and factious purposes?”

Personal security of some of the directors and stockholders of these Banks, for our public money, to the amount of millions! “The payment of one or two per cent. upon the average deposite, to constitute a fund to meet any possible losses!” Am I to reason on such a scheme before an American Senate? Sir, human ingenuity could not offer a grosser insult to the human understanding. Your money is safe, perfectly safe, and admitted to be so, and you are to take it away, and venture it on *personal security* of individuals, and on a *safety fund*, to meet *losses* which you *are to create by the change*. The folly and madness of the act is only equalled by the confidence with which it is urged upon us. But, sir, you, the Congress of the Union, were not even to be permitted to judge of the scheme before it was executed. Your Secretary has already executed it, in part. Your money has been ventured, and without consulting you, and without taking the security; for he yet has none, and, of that description, he never will have. Directors and individual stockholders are not idiots; they will refuse the security when it shall be demanded. The Executive power has plundered your Treasury, and presents you such personal security *as he can get*, and a *safety fund in its stead*. And we, sir, we, on our solemn oaths, are to answer that we approve his course. For myself, never. Let Congress approve, and not only will your money be squandered, but your constitution violated, your laws contemned; and, in the room of law, you will have the Executive will, acting upon and controlling an army of moneyed mercenaries, and regulating a money power, which, united with the sword, can jeopard your liberties whenever he pleases. The vindication of the law, at the hands of Congress, can alone arrest this result.

We have had experience upon all the points connected with this part of the Secretary's reasons. But, sir, I begin to doubt the truth of the old maxim—that experience is an efficient teacher to public men and Governments. The history of the old Bank ought to have been full of instruction to the Secretary. It had a capital of six millions; it had a circulation, in proportion to its capital, nearly three times greater than the present: a large proportion of its stock was held abroad, and the holders were to be paid in specie. It had not an hour given to it, to wind up its concerns. It continued its active operations to the last hour of its existence, and was compelled to appoint trustees for that purpose. Yet, sir, not one of all the views of the present Secretary were real-

ized, so far as we are informed by its history. Its notes did not depreciate—specie became hourly more plenty in its vaults—there was abundance of circulation, *such as it was*. The immediate distress was small, the evil was consequential. When Congress was deliberating on the propriety of its renewal, one of the principal difficulties arose from the fact, that it had been allowed no time to settle its concerns, and it was feared that this circumstance would create distress to the stockholders and to the community. This difficulty was, with assumed carelessness, alluded to by the astute Secretary of the Treasury in a conversation with an agent of the Bank. The agent incautiously remarked that the Bank could appoint trustees, and would thus be enabled to avoid these evils. “Thank you, sir,” said the Secretary, “you have relieved us from our only difficulty.” The charter was permitted to expire; trustees were appointed; the settlement was made; and not one of the anticipations of our present Secretary was then realized. Not one of these irresistible causes of hasty action, in him, was then found to exist.

Under this head, the Secretary gives us another view, to prove it a question of time, and that there could be no delay. [p. 7.] The argument is this: The election of President and non-renewal of the charter was known in December, 1832; and the Bank ought then to have curtailed. It had discounts in December, 1832, of sixty-one and a half millions; and in nine months afterwards, in August, 1833, of sixty-four millions; being an increase of two and a half millions. An agent was then appointed to inquire, in the four principal commercial cities, whether the State banks would receive the deposits, and perform the duties of the Bank of the United States. This ought not to have changed the action of the Bank, as, by inquiry of the Secretary, it might have learned that all the deposits would not be withdrawn, but that the process would be gradual; that the amount of revenue bonds falling due, and the cash duties, enabled it to be liberal; but yet, in three months, before 1st of October, it had curtailed its accommodations four millions. That it received two millions additional deposits, which, added to the four millions, made its curtailment, in fact, six millions; that a part of this was specie, for it was increased \$639,000; that the balance due from State banks increased two millions, rendering them unable to protect the community, as they were compelled to look to their own safety; and that thus a pressure was produced by the Bank, which it was necessary to arrest before the meeting of Congress.

I have seldom, if ever, seen a larger share of misapprehended facts and misapplied reasoning within the same compass. It commences with a false assumption, that the Bank knew that it would not be rechartered in December, 1832. I trust I have shown that this could be known only on one principle, which is, that, as the President was opposed to it, and his will was law, therefore there could be no renewal. Is the Bank to be condemned for not crediting this conclusion? Yet, *it is upon this fact* that the *whole reasoning* of the Secretary rests. If, in December, 1832, the Bank was not bound to act on the belief that a decision had already been made against it, then his reasoning altogether fails.

But further. He complains of the increase, from January to August, of two and a half millions. The periods are unfairly selected. To learn correctly the extension or contraction of the business of a Bank, in different years, it is necessary to compare the same periods of the year. In the business of all banks this is the case, and between January and August no fair comparison can be made. It is peculiarly so with the United States Bank. The great mass of its issues, discounts, and purchases of bills, depend on the course of trade and business between the north and the south, and this country and Europe. Every man, whose thoughts have extended as far north as Maine—as far south as New Orleans, and as far east as Europe, is perfectly apprized of this, and cannot be ignorant that, between times of purchases in the South and remittances from the north, there never is, there never can be, a fair comparison. Why, then, did the Secretary select these periods? Was it to do justice to the Bank, or to frame an apology for an illegal act? But the increase was not greater than it had frequently before been between the same



periods in other years; and if the Secretary had taken the trouble to look into the returns of the Bank, and the reports of his predecessors, he would have found such facts as these. In 1831, between the same months, there was an extension from about 46 millions, to more than 57 millions—nearly 12 millions. In 1832, from January to April, only three months, an increase from 68 to 70½ millions, nearly 2½ millions, as great as is complained of in nine months, in 1833. And there are various other instances of a similar character, through all the history of the Bank. The same results, also, are manifest, by comparing its *circulation* at different periods.

So, also, the Secretary complains of the contraction of accommodations between August and October last. Yet, if he had made the same comparison, he would have found equal and more extensive diminutions at other times, which were unfelt by the community, and which were never thought to be evidence of misconduct, nor attributed to improper motives. One instance is to be found in the preceding year, 1832. From August to October, of four and a half millions, that is from 68 to 63,693,000; almost double the amount complained of in 1833.

Now, sir, I complain of this concealment. Did not the Secretary see and know these things? Then, why did he attempt to impose on Congress the simple fact of the extension and diminution, in this year, as evidence of improper purposes and objects in the Bank, at the times they were made? The whole history of the Bank is filled with similar facts, not in relation to the notes and bills only, but of every species of property and interest which the Bank holds. And it is so with every other bank. Besides, who ever before heard that we were to estimate either the wisdom or virtue, or the folly and vice of a bank, by simply taking the amount of its discounts, at different times, without inquiring into the causes which produced them; the state of its active means; the funds under its control; the wants of the community in its commercial and other transactions? Does the Secretary state? Did he know how all these circumstances operated upon the Bank? Whether they justified its conduct, without regard to the motives which he attributes? Not at all. It was sufficient for *him* that the Bank had 61½ millions out in January, and 64 in August; and he infers that it must, of necessity, have been regardless of the solemn decision against its charter. It had curtailed four millions by October, and therefore it intended to oppress the community. If our Louis is satisfied with such reasoning, he will find that he has discharged a Necker and substituted a Calonne.

But, while we are comparing these expansions and contractions, which are so offensive to the Secretary, I desire attention to a fact which is worthy of note. The expansions in 1831 and 1832 are attributed in *both* the remarkable papers which have issued from the Executive, to a design in the Bank to *acquire political power*, and affect the Presidential election. I wish self-love could permit certain individuals to believe that there could be any motives to action, but such as relate to friendship or hatred of themselves. Sir, when did the Presidential election take place? In the fall of 1832. When was the largest extension? Through 1831, and up to April, 1832. During that time, certainly the most vehement and active part of the electioneering campaign did not take place. It was after April, 1832. Now, in April, 1832, the amount of these discounts and accommodations was greater than at any moment during the existence of the Bank. They reached to nearly seventy and a half millions; and from that moment, while the contest was hottest, as the election was approaching, while the canvass was going on, there was a steady and rapid diminution; so that when the election actually occurred, they were only \$63,693,000—a decrease of more than *six and a half millions* in about *six months*. The Bank is accused of attempting to influence the election by extending its discounts; yet, when the election might be affected by it, if it could indeed be affected by this means at all, it reduces six and a half millions. Why, sir, do these officers suppose us ready to receive any absurdity which they may choose to assert?

Is it not unpardonable that such impositions should be practised by grave



official documents, and the people be misled thereby, because they have not the means of correcting them? If the increase from January to August was criminal, was the diminution afterwards also criminal? Shall the Secretary complain in August that the Bank would not wind up its concerns, and then, when it did immediately afterwards diminish its business, charge that very act as a crime? Shall he avow his intention to force the Bank to close, do an act which compels it to look to that object, and then charge it as unprincipled for doing the very thing which he required it to do? Is such conduct to be tolerated and approved?

But, sir, what right has the Secretary to complain that the Bank extended its business? Did it injure us or our interests? were the profits upon our stock less? were our deposits rendered unsafe by it? These things are not pretended. Our profits are increased; and, if possible, so is our security, provided the business of the Bank be not extended beyond its means; and of this the Bank was the proper judge. An examination of the transactions of the Bank will show that there has always been remarkable caution and skill in the extension and curtailment of its business: both being adapted to the active means in its possession at the time, and to the wants of the community. A comparison of its conduct, in this respect, with the known history of the country, would justify high commendation. But this is not my purpose. It is sufficient that it has been a faithful agent and trustee, and that the reasons of the Secretary, as applied to it, are unfounded.

The Secretary tells us that the Bank reduced its accommodations in August and September last, about four millions of dollars. There were then in the Bank nine millions eight hundred and sixty-three thousand dollars of deposits. Now, sir, what was the situation of the Bank at that time, in relation to these deposits? It had previously discounted upon them, and, to the proper extent, furnished thereby accommodation to the public. But the moment had come when it was necessary to withdraw all the accommodation which rested upon them. If they were to be taken from the Bank, it could not; it had neither the right nor the power to discount upon them. It would have hazarded its own safety, if it had. It had been warned that they would be withdrawn; nay, at the time of its curtailing the four millions, they had been in part withdrawn, and the process was going forward. How, then, could the Bank, without total disregard to its own interests, continue accommodations founded upon funds which it had not, or, if it had, was immediately to lose, before the discounts could be returned? It was impossible.

The Secretary says that it might have been liberal to the wants of the commercial community, because, in addition to the ordinary receipts from bonds on previous importations, the season for cash duties was at hand; and the receipts from both sources would be large. But, sir, would they not be deposits still, and subject to the same removal as the other deposits? Besides, the Secretary takes the months of August and September, and speaks of diminution *then*, and of receipts from bonds and cash duties *then*. Yet, among the papers which he sent to us, is the copy of his order to the Bank, to deliver up to the collector "all the bonds to the United States, payable at or after the 1st of October," dated 26th September, 1833; and the order to the collector to take the bonds and deliver them to the Girard Bank, and to make no deposits in the United States' Bank after the 30th September. And this order is dated on the 26th September also. The Bank was to be liberal on the bonds and the cash duties; and these are both taken from it, and the decision to take them away was made on the 18th September, and executed on the 26th, although the purpose to remove them was avowed long before. I leave these facts to the reflection of every ingenuous mind.

The Secretary complains that there was a severe pressure on the community. Why, then, did he do an act which he must have known would increase that pressure? His assertion is now *gravely denied*, and we are assured that it is mere *imagination*. The Secretary is right, and his advocates wrong, in this difference between them. Sir, no pressure? Are the murmurs which reach us on every breeze, and burden every mail, mere fancy? Your stocks of all

kinds are depreciated—even the price current tells us that. Your works of internal improvement are arrested. Your agricultural products, in the south and in the north, have fallen in price. Your merchants have countermanded their orders. Your manufacturers have diminished their work, and are in danger of insolvency. The interest upon money has risen from six to twenty-four per cent. in some instances. There is a paralysis of enterprise. Nor let it be imagined that it reaches only your commercial cities and large manufacturing establishments. The merchant cannot purchase, nor the farmer or mechanic sell, and laborers are thrown out of employ by thousands; and, unless arrested, and speedily, it will, and must, reach through all interests and all classes of society. It will, in its progress, fall most heavily on the humble, and the laborious, and the poor—on men of small capital, your farmers, your mechanics—your working men. Their daily bread will be affected by it, for their occupations and their wages will be diminished or taken away, and their feelings will, ere long, be heard in tones not pleasant to the ears of power. “Their griefs, and not their manners, will reason” *then*. Already have anxiety—apprehension—gloom—dismay—pervaded the community, and the dread of the future is more appalling than the suffering of the present. Shall we shut our eyes to these facts, or deny them at the bidding of power, and justify them by the machinery of party? No, sir, there is guilt—deep guilt—resting upon the authors of this distress; and the indignant frowns of an injured people ought to rest upon them. Who are they? and where are they? Let us not mistake them, and cast our denunciations upon the innocent.

Did the Bank do this mischief? Then let punishment fall heavily upon it. But, in my deep and solemn conviction, the guilt does not rest there. No act of the Bank, previous to August last, had injuriously affected the public. It had not curtailed. Its course was liberal and just, and met the applause of all. The community was in a state of quiet prosperity. At that moment, an agent was appointed to accomplish the ruin of the Bank. The determination to remove from it its chartered right, and privileges, and benefits, was originally suggested in the neighborhood of Wall street, and had, for months, been announced, but was, for a time, disbelieved by the whole community.

Ninety-nine out of every hundred of the friends of the Executive declared it impossible, and that the imputed intention was a false accusation. But it was pursued steadily, until it was understood to be the wish of the President, and then it was justified by partisans, and declared probable. Still it was disbelieved. But at length semi-official authority declared that the purpose was fixed. The Cabinet was consulted, the counsel of a majority was disregarded, and the decree was passed. The sure destruction of the Bank—its inevitable overthrow—was then proclaimed; and, with inalignant triumph, it was represented as a crouching suppliant at the feet of the Treasury. But, sir, the edict was powerless. Then, and not till then, did the Bank make one movement which could, by possibility, lead to any pressure upon the community. And then only did it do what was indispensable to its safety. Let any man read the dates of the papers which have been communicated, and tell me if this statement be not true. As early as the 3d of June, the President communicated to Mr. Duane his consultation of the Cabinet; and soon afterwards the determination of the President was publicly known. And it was a determination, not for a *partial removal*, as the Secretary affirms; no such partial removal was mentioned; it was *entire*; the reasons for it demanded that it should be entire; the object could not be accomplished unless it was of the whole deposits. What could the Bank do, but refuse to extend its issues, and prepare for the blow? Was it to rely on a partial removal? to discount on money which might be taken from it at any moment? to leave its numerous branches, without preparation, exposed to the vengeance of exulting enemies? Will any man seriously assert that it should have relied on the fairness of its foes? Look to Savannah. That branch was considered weak in specie. Its notes were collected, purchased at a premium, and three hundred thousand dollars were presented in a single day. Just in time, sir, for the news of its insolvency and dishonor to reach Washington at the opening of the session. The vile purpose was not accomplished; but it is evidence of the consequences to



the Bank, had it failed to prepare for the emergency. And shall we be told that the Bank, and not the Department, produced the pressure? It is perfectly apparent, from the documents before us, that the first movement was by the Executive; that the necessity was thrown upon the Bank; and that it curtailed only so far as the withdrawal of the deposits, and the security of itself and its branches, imperiously required. In deciding who produced the present public calamity, I ask, and desire an answer: was there not a state of great prosperity in business, until THE AGENT was appointed, and the determination to remove the deposits was made? If this determination had not been made, was there a necessity, a possible motive, for the Bank to do one act which could injure the existing prosperity? any motive to curtail, and thus harm itself? When that determination was made, when the deposits were to be withdrawn, could the Bank continue to discount on those deposits? Must it not, of necessity, curtail to the extent which it had discounted on those deposits? When its destruction was avowed, was it not absolutely necessary, at least, to stand still, or to prepare for the attack, and put itself and its branches in a situation, not only to deliver up the deposits, but to meet every demand upon it and them? Sir, let public resentment fall where public resentment is merited.

But I deny that the mere act of curtailing by the Bank of four, or even ten millions, did or could produce the pressure under which we suffer. The same amount, and in the same time, has been curtailed without any such effect—nay, even without the country being aware of it. I refer for proof to the reports of the Secretary of the Treasury, and the statements of the Bank, and to the history of the times. You have a circulation of about seventy-five millions, and an annual circulation of between three and four hundred millions; and can the withdrawal of four millions in the time mentioned, and in the ordinary operations of business and commerce, reach and agonize every interest of the country? No, sir, the cause is different; it lies deeper, in the very nature of credit and currency, where the Secretary has made no search; it is not produced by the want of money in the country; it is here, all here, as much as in August last; it has not been consumed. But, sir, you cannot get it. And why not? The reason is obvious. Credit and confidence constitute the essence and vitality of all circulating mediums, and of all moneyed transactions; and credit and confidence have been destroyed by violations of your constitution, and by the trespasses of your Executive upon the legal rights of those who deal in your circulation, by breach of faith, and by the interference of reckless malice and ignorance in the management of your financial concerns. The Bank had not the power to produce it. It was the alarm given to moneyed men, and to banking institutions, when they saw the determination to destroy the United States' Bank by illegal means, and to restore the state of currency which existed from 1811 to 1816. They would not hazard their money; they kept it closely, either to preserve it against danger of loss, or to speculate upon the miseries of others, when sacrifices should be required. Each prepared to guard himself from those around him. Distrust produced curtailments and refusals to lend. The panic and the pressure spread instantly, rapidly, widely; and will continue to spread wherever the circulation of your currency reaches—from the proudest mansion to the humblest cottage—from your cities to the outskirts of your population—unless justice be done, and confidence in the faith and honor of your Government, and the administration of your finances, be restored. No attempt to cast the blame on others will answer; no edicts of authority are equal to its restoration; no caucus management, no voting to sustain a party, or to manifest devotion to a man will relieve the country, and save your merchants and manufacturers from insolvency, and your farmers, and mechanics, and laborers from distress. You might as well attempt to arrest or guide the electric fluid in its course, without the aid of the philosopher of nature upon the principles of nature, as to control the credit and confidence which are essential to your circulating medium by the mandate of power, or the discipline of party.

Sir, the Secretary, and those who ruled him, ought to have foreseen the results of his movements, or they are unfit to touch the currency and finances of the country. The President ought to have employed no such agents to deal



with the most delicate and difficult of all the concerns and interests of human society. He who undertakes to manage the currency ought to understand its nature, and the instruments he uses. Would you repair or tune a piano with a blacksmith's hammer, or bleed a sensitive female with a butcher's cleaver? The treasury of the nation and the finances of the country should not have been made the weapons and instruments of political warfare—the thongs with which to chastise political adversaries, and the cords by which to bind partisans to the support of party, or premiums to reward their fidelity. But the evil has been done, and it must be repaired by calling back credit and confidence; by vindicating the authority of the laws in the restoration of the deposits; by wiping out the stain from the national faith; and by the *legislative power* providing such fiscal agents as its wisdom shall dictate, and making such enactments as shall give security to the future. What these are, it is not *now* necessary for me to discuss.

The Secretary proceeds to assign his other reasons, growing out of the manner in which the affairs of the Bank have been managed, [Rep. page 11.] I intended to examine them fully, but causes obvious to the Senate restrain me. I shall notice them rather to draw general conclusions from them, than to expose them in detail. The Secretary founds his argument upon the fact that the Bank is a fiscal agent of the Government, and was not created for private benefit, but has violated its duty by concealing its proceedings, and by doing acts criminal to the Government; that it has also sought political power.

It is a fiscal agent, but it is at the same time a corporation for the private benefit of the owners. As agent, its duties are prescribed by the charter. While it performs these, the Government has no right to complain. It is on no principle bound to do for the Government more than the law requires. That is the contract by which the agent was appointed, and his letter of instructions. All these it has done; the Secretary does not deny it. And the records of your Government, since 1817, are full of reports and proceedings of Congress—of reports of Secretaries of the Treasury—of messages of the Presidents—even of *the present President*—declaring, in unequivocal terms, its entire faithfulness and skill in performing all that the law prescribed, and all that the Government had a right to demand. Such ample testimonials in favor of any institution are no where to be found. Senators may readily refer to them; and I therefore confidently affirm that it has, in no respect, failed to do its duty to the Government, *under the law*. But it is also a corporation for private benefit, made so for the express purpose of being a fiscal agent. After it has rendered its dues to the Government, it has a legal and unquestionable right to seek its own interest; and if it performs any service for an individual, or for the Government, it may claim, and is bound to claim, proper compensation for it. In this respect it is like other individuals and corporations. An illustration may be found in the charge by the Secretary respecting the French draft, the circumstances of which are known to those who take the trouble to read. The Government drew a bill on France, and desired the Bank to buy it; it declined, because it was not necessary for its interest, but offered to collect it, as it did bills for others. Was the Bank bound to buy? It is not pretended. It was not one of its duties as fiscal agent. But the Government urged, and it did buy, and paid the money; it bought as an individual, and from the Government as an individual; it had, therefore, all the legal rights of the purchaser and holder of a bill of exchange: one of these is, damages if it be not paid. The bill was sent to England, thence to France; was not paid, but dishonored, and was paid for the Bank in France: so that, for a considerable period of time it had paid for it twice—once here, and once in France. Upon what honest or legal principle could an individual have denied payment of the damages? None. In what do the rights of the Government differ? Is it absolved from the rules of common honesty and common justice? May it do properly what would dishonor a man in such a transaction? Such are not my opinions of its duties, nor of the regard which it owes to law and justice. Nor is the denial conformable to its practice. It has again and again paid damages on protested bills. If I am not misinformed, there are, at this moment, bills upon one of your Departments, which is waiting for funds to discharge them,

and on which the Department has promised to pay interest and damages. Then why not in this case? But it has not only paid damages, but where it has been the holder, has uniformly, and with unbending firmness, always demanded them. The records of your Treasury show a multitude of cases of this description, and, among others, the familiar one of Stephen Girard.\* And, sir, there is no apology in the fact that the Government had deposits in the Bank at the time. The statements of the Bank disprove it, and, if they did not, the case would not be altered. Those deposits were the right of the Bank, by law, for which it had paid, and on which it had a right to discount, until they were drawn out for the payment of the debts of the Government.

With regard to the action of the Bank, in what is said to be postponing the payment of the public stock in April and December, 1832, the Secretary refers to the knowledge of Congress and its acts. And there I am willing to let it rest, without comment on the facts. But did it not occur to the Secretary, while he was assuming his high authority, that he was, in this very complaint, casting additional insult upon Congress? Did it not occur to him that this subject had been investigated by Congress with care, and its judgment pronounced, that the Bank neither sought nor requested a postponement; and was, in effect, acquitted of blame? How dare he, by repeating the accusation, thus insult a Congress in which the friends of the Executive had control? How long will Congress bear to be thus bearded under the sanction of the Executive, by men who live upon the Executive breath, and whose lives are fleeting as the changes of the Executive passions?

So, also, sir, the complaints about the Exchange Committee. This subject of exchanges, and the action of the Bank in regard to them, was commenced in July, 1817; and a correspondence, at great length, held by Mr. Crawford with the Bank on the subject, and, after some opposition from him, which was subsequently waived, a plan of exchanges, foreign and domestic, was adopted, which has, with few and unimportant variations, been pursued, in form and substance, to the present time. The active operations under the plan, however, did not, I believe, commence, in consequence of the situation of the Bank, until 1820. But every Secretary of the Treasury has been acquainted with it, and approved it. The Committee of Investigation of 1819, on which were Spencer, Lowndes, McLane, Bryan, and Tyler, had this, with all other matters, before them, and found no cause for condemnation. It is not even mentioned, in the long list of grievances, which Mr. Spencer thought demanded that a *scire facias* should issue; nor to be found in amendments proposed, at that time, to restrain the Bank. In every investigation and discussion since that time, it has been the subject of comment, and yet Congress has not thought it proper to interfere; and now the Executive, and a Secretary of the Treasury, found, on their omission, a reason for violating the rights of the Bank, and assuming to do what Congress declined to do.

But the Secretary complains that, on this point and some others, there was concealment from the Government directors, and thus, from the Government—meaning *always* by that word, the Executive. Sir, if the directors did their duty, there was no concealment. The rules adopted in 1817 prescribe the number of directors in addition to the president and cashier who shall act on this subject; they are to meet daily; to purchase at rates fixed by the com-

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\* The case of John M. Ebirek, in 1819-'20, also illustrates your practice and principle. He endorsed, gratuitously and without consideration, a bill on the house of Willinks, of Liverpool, for two thousand pounds sterling. The house failed; he wrote to his friends to protect the bill; but, uncertain whether his orders would be in time, he applied to the Department, and offered to DEPOSITE THE AMOUNT IN THE TREASURY, WITH INTEREST FROM THE TIME OF THE PURCHASE, to be returned to him if the bill was paid in England—or to give security, at once, for the whole amount, as soon as advice should be received, with interest and charges of protest and postage. Yet both offers were refused, and he was required to pay, and did pay, damages. He met the same fate on a second bill on Groning. When an innocent endorser is thus treated by the Government, how can it—how dare it—complain that a purchaser from it also asks damages? Is it not gross injustice? unworthy disregard of its own honor and reputation for fair dealing? Yet such is the complaint made by the Secretary and the President against the Bank, and for which its chartered rights are to be disregarded. It is sufficient to create disgust in honest and fair men.



mittee. The security on the bills is prescribed to them. Even if one member objects, there is to be no purchase; and once a week a statement of the Exchange Department is laid before the Board of Directors, and is admitted to be so done by the four directors, in their letter of the 22d April, 1832, to the President. How unfounded, then, the accusation that the board violated the charter, by permitting less than seven to transact the business of the Bank, and concealed, improperly, its exchange transactions.

But the Secretary complains of another case of concealment. I give credit for the shame which prevented him from mentioning the case, by name. He refers us to the letter of the four directors, in which it is found, and in which, alone, it ought to be found. Any official Executive document would be disgraced by it. With regard to that case, I only state, that the *inquisition*, by which it is developed, was secret; founded on a missive from the President, which he had no authority to write; not avowed; traitorous to their fellow members; a violation, direct and positive, of the words of the charter; a base inquiry, manifestly governed by party resentments, to be used for party and vindictive purposes, meriting the scorn of honorable minds. A true estimate of the objects of that investigation, and of the *new lights* afforded to the Executive, to justify his action against the Bank, after the refusal of Congress, may be formed, when it is recollected that the four directors communicate, in answer to the injunction of the President, information only *on two subjects*—the action of the exchange committee, and the accounts of *Gales & Seaton*. These were the subjects of import, which called upon the President to descend from his high station, to turn inquisitor, to *find motives and reasons for this discharge of official duty*; and these, sir, the *financial reasons* of a *financial officer*, which compelled him to trespass on the rights of the Bank, and insult the legislative power.

But, sir, the Bank used its money for political purposes. And here again the Secretary selects the arbitrary periods of January, 1830, and May, 1831; and makes a moderate mistake of nine or ten millions. He alleges that, in January, 1830, the Bank had only about \$42,400,000 of debts due to the Bank; but in May, 1831, \$70,400,000; *an extension of twenty-eight millions*. Now, if any Senator will take the trouble to cast up the items of discounts and bills, the public debt, and the balances from State banks and foreign houses, he will find an amount of about 52, instead of \$42,000,000, of the means of the Bank, in active use in January, 1830. And, if the same process be applied to May, 1831, there will be found less than \$62,000,000, leaving, as the difference between them, in accommodation to the public, less than 10, instead of \$28,000,000. And to justify this increase, he will find in May, 1831, \$1,400,000 of specie in its vaults more than in January 1830; \$2,828,000 more of deposits; \$1,762,000 more of State bank debts; \$211,000 less in real property; a difference, in all, of more than \$6,000,000, to justify this extension. And if the simple rule of three had been applied by the Secretary to the different items, he would have found that the extension, in proportion to its means, was very little, if any, greater in May, 1831, than in January, 1830; and that, for any difference which did exist, the commercial wants of the community at those periods would form an ample reason to any well-informed financier, without attributing the fact to the desire of acquiring political power, or preventing an individual from being elected President—a motive of action in the Bank which seems to be the sleeping and waking dream of certain minds. The Senate know, if the Bank had refused the extension of its accommodations at that time, the merchants, the public, the Government, must all have suffered inconvenience and injury.

The only remaining evidence, which I now recollect, of the misconduct of the Bank, which was detected by the inquisition, and which proves an effort to gain political power, and forms a *reason* with the Secretary, relates to the expense account; and the only questioned matter in that is, its publication of certain papers; prepared by others, and circulated by it, in its own defence. Now, this subject was investigated by Congress, under the auspices of the friends of the Executive, and their powers under the charter were ample for this purpose, although the same powers are not given to the Executive.



Congress did not think fit to act upon their investigation of the facts; yet they had scarcely left Washington, before this inquisition was established, under Executive patronage. And what was discovered? Nothing but what was upon the books, and must have been known to the investigating committee. The first cause of complaint is, that the President of the Bank was authorized, by resolution, to expend as much money as he pleased, *even the whole capital of the Bank*, to buy presses, bribe editors, publish pamphlets, &c. Sir, is this true? Or is it false? The resolution of the 30th November, 1830, was founded on a suggestion that an article in the Quarterly Review, on banks and currency, written by Mr. Gallatin, might be beneficially circulated. That of the 11th March, 1831, that benefit would result from a similar circulation of other articles which had issued from the press; and it authorizes the President of the Bank "to cause to be prepared and circulated such documents and papers as may communicate to the people information in regard to the nature and operations of the Bank."

Nothing is said of buying or bribing presses—nothing of all the terrific purposes which haunt the Secretary. The President's duty was to have prepared and circulated documents and papers; and their character is defined; they must relate to *the nature and operations of the Bank*. Such a trust would have been bestowed, by any board, of any bank, on the President, or a committee of directors, in whom they had any tolerable share of confidence; and here especially so, as the expenditures must appear in the expense account, which is regularly submitted to the dividend committee, on which it so happened, I believe, that one of these malcontent directors was. By this process, the control of the board was complete. How, by any fair construction, can this resolution be extended beyond the defined object? How can it be regarded as placing the whole capital in the hands of the President? Honest men, in executing it, would never construe it thus. They would be confined to *reasonable* expenditures for the *specific* purpose. And, until I saw the unlimited power drawn by the Secretary from the general words of the charter as to the removal of the deposits, I never imagined that any sensible and correct agent, invested with power on a given subject, would infer a right to so general a license of motive and action. The construction of the Secretary, of this resolution of the board, is a fit companion of his construction of the terms of the charter.

This form of resolution is common in all cases where discretion is confided; and there are other examples in this Bank. I will not refer to that respecting counterfeiters, because it seems to be misconstrued as offensive, and as creating comparisons which I have no disposition to make or sanction. But another instance of the same kind is found in the resolution authorizing the President to take steps necessary to protect the Western branches, from a run made upon them. The authority, in such cases, cannot be restricted by the words of the resolution; it is restricted by its nature and objects, and by the fidelity of the agent acting under it. What was done under this resolution? Have Senators looked into the list of publications?—Gallatin's Essay; Tucker's Review; Clarke and Hall's book; reports of committees of Congress; speeches of three members of the Senate—Clay, Webster, and Ewing; bank documents; review of the veto message, and of a Senator's speech; some addresses to Legislatures; and copies of three newspapers, containing a part of these, and perhaps of some other articles?

These are all that I find in the precious developments of these Executive, but not Governmental agents. The expense, we are told, indeed, on Executive authority, amounted to some 80,000 dollars; but there was a slight mistake of some 30,000 in the items, and the addition. The average expenditure for three and a half years was a little more than 14,000. And, of the whole, about one-half was for printing and distributing Congressional reports and speeches, and but about 2,000 for papers containing these essays, &c. And was it criminal to do this? Is there harm in circulating the Essay of Gallatin, and that of the accomplished scholar and political economist, Tucker? I wish the Bank had sent copies to the Secretary, and that he would have condescended to read them, before he acted. Is there crime in distributing reports

which Congress had thought it proper to print, *by thousands, at the expense of the public Treasury, for the same object—the information of the people?* Is there guilt in publishing any or all these papers; and those speeches, with the rest, which shed lustre upon the Senate itself, and will elevate the respect for American intellect, wherever they shall be read throughout the civilized world? They must have strangely constituted minds who can complain of this; and must hold no enviable position, when such documents are considered by them as offensive to their party and party purposes. But, sir, I recollect that John Sergeant, as a member of the Board of Directors, happened to be the person to whom a proposition was made for printing the Congressional Reports, and that his name is dragged in by these directors, in their honorable and manly estimate of what is right in communicating facts for Executive information and action. Sir, why was this? Was it out of love for fair dealing, and for the sake of justice and truth? Or was it to play upon party and political passions and prejudices? Why does his name appear upon the *Records of the Inquisition*? He had, sir, been a prominent politician, a candidate for a high station under your Government, associated with another, of whom I may not utter a word, although, here and elsewhere, I shall feel all that is justly demanded from patriotic and virtuous feeling, for services, to my country, of the best and noblest kind. It may be, sir, that these facts influenced these directors, when they placed his name, as an agent, in these publications, and without inquiring what was the nature and extent of that agency. But, sir, the movement will produce no effect favorable to their wishes with the people, whatever it may do with those in power. They know well that the name of *John Sergeant* cannot be associated with illegal, dishonorable, or dishonest purposes. For myself, I rejoice that I was permitted to give him my suffrage. He is a man, mild, amiable, unassuming, unostentatious, yet firm, decided, and energetic: “not early won, to fawn on any man.” Always candid and frank, with no concealment of views, no management and finesse to bind partisans to his control; profound in legal and constitutional knowledge; pure in private life, as in public morality; a republican by birth, feeling, education, principle; a patriot, ardent and devoted to the best and highest interests of his country; with a character *totus teres atque rotundus*. And should the time ever come when he shall wear the honors of his country, even the highest, he will wear them without a stain. I beg pardon of the Senate for my deviation from the strict topics of debate; but I could not restrain this slight expression of respect and friendship for a man, who is eminently worthy of both, as he is of the regard and confidence of his fellow-citizens.

Sir, have matters arrived at such a crisis, in this free land, that the publication of such documents as those which I have mentioned is to be criminally punished, without law, by the Executive? That an individual may not circulate papers relating to his character and proceedings with impunity? If so, *let it be so recorded by our vote*, and let the *people know it*. Let them be told, that official documents and able discussions may not be sent to them, *unless they advocate the Executive*. And let them be told further, that, if a corporation presumes to defend itself from any imputation which *one man* and *his partisans* choose to throw upon it, its legal privileges, its chartered rights, may be taken away, *without trial*, and at the nod of power.

Mr. President, the Bank had not only the legal right, but the moral obligation rested on it, to defend itself. It has, at least, the privilege which we allow to the lowest wretch in the community, to whom neither our laws nor our feelings deny the privilege of self-defence, or the permission to publish a denial of the guilt charged upon him. But, sir, *if* the Bank has acted incorrectly, *if* it has violated its duty and its charter, there is a full and ample remedy, provided by the charter itself. But how? By the power of the Executive? No, it is not intrusted to him; but by the tribunals of the country, upon the motion of Congress or of the Executive. The 23d section, drawn by Mr. Daggett, provides, that, when there is reason to believe that the charter has been violated, a *scire facias* may be sued out of the Circuit Court of the United States for Pennsylvania; that, after it has been fifteen days served,



before the commencement of the term, the case may be examined by the court, and a forfeiture declared: PROVIDED, THAT EVERY ISSUE OF FACT JOINED BETWEEN THE UNITED STATES AND THE CORPORATION SHALL BE TRIED BY A JURY; and there may be a review by the Supreme Court. Is this law a dead letter? Was this provision inserted for no object, but that the Executive might trample it under foot? When Congress have provided a mode of punishment *by court and jury*, may the Executive disregard it, and inflict punishment of *another kind, without trial*? The President, in his annual message, alleges that there was not time, for this proceeding, before the expiration of the charter. Is this so? He knew the facts in April, 1833, at least in August, 1833, and the charter does not expire until March, 1836. The court sat in October last, and, in one year, the final decision might have been had. The late Attorney General ought to have informed the President better. But if the allegation was true, is that a justification? The subscribers to the Bank ventured into the contract, on the faith of *this* provision, by which they supposed their rights were protected; and if it be not sufficient for its object, if it fails, can the Executive, *of his own mere motion*, supply the defect. This assumption to punish the Bank, in violation of this law, is one of the most gross and contemptuous acts of disregard of legal restraint, to be found in our or any other history. It is an act of undisguised despotism. It spurns the high constitutional right of trial by jury and the laws of the land, and places on the judgment-seat the vengeance of irritated feelings, of selfish prejudice, of party passion. I entreat, I implore Senators that they will not, for any present purpose, for any passing object, give countenance, in this home of constitutional liberty, to this dangerous usurpation.

Mr. President, I have discharged my duty, with no common pain, by presenting my opinion of the reasons which the Secretary has assigned for ordering the public money to be removed from the Bank, which had, by law and solemn contract, been made the place for its deposit—the temporary Treasury of the Union—for its safe keeping. I do believe that those reasons are insufficient, and the principles which he avows dangerous to liberty. It is a solemn duty in Congress to express its strong condemnation of the act—to restore the money—and, as far as practicable, to maintain the faith of the Government. It is not the less necessary that we should act promptly and efficiently, because it has been done under the pretended sanction of the law. There are no more dangerous encroachments against free institutions than those which are made under misconstructions of law, and appealing to its authority. Nor, sir, is there any tyranny more odious and terrific than that which preserves the forms of free Government, while all its powers are centred in the will of one man.

But we are told, though all that I have said may be true, that we—the Senate—may not express our judgments upon these resolutions—we, to whom the law requires the reasons of the Secretary to be submitted for our decision, may not pass on those reasons, if we think the act a violation of law and duty. Why then, sir, submit them to us? Why this mockery of legislation? And why may we not denounce and condemn such conduct? We are told, because the President or Secretary *may, by possibility, be impeached*, and we must be their judges. Andrew Jackson impeached! and R. B. Taney, a favorite agent and officer of his, who acted under his orders, brought to our bar! Sir, are these suggestions made in a spirit of irony and sarcasm at our supposed impotence? Who are to move an impeachment? *Will it come? Can it come?* When, in our history, was a triumphant President, at the head of a triumphant majority, impeached? When was an instrument of his a partisan of that majority? No, sir, this terror is reserved for minorities. Look back to the annals of impeachments, and let them answer on this point. But suppose an impeachment were to be moved, does that destroy our legislative power of action? I do not so read the constitution of our country. The people have ordained that this body should possess and exercise some of the highest functions of all the co-ordinate Departments of the Government, and they have not provided that the necessity of exercising one should take away the others. The constitution of this body, in that respect, demands the highest attributes



of intelligence and integrity in its members. May it ever sustain its powers, unsundered, uncontrolled, uncontaminated.

We are compelled, hard as is the task for the human mind and heart, to pass daily and hourly from legislative to executive duties; and the latter often arise from our own legislative action. And so it may be with regard to our judicial powers; for so the people willed it, and, I believe, most wisely. The representatives of equal States, we must worthily, as such representatives, discharge *all* our duties; and, above all, we must not permit a remote contingency, that we may sit as judges, to deprive us of our largest and most important power under the constitution—that of legislation. The time may come, sir, when a combination of both these powers may be indispensable to the safety of our liberties, our laws, and our constitution. Though we may not choose to assert that it has already come, yet it may not be distant; when some spoiled child of fortune, with no merit but that of seizing boldly on popular prejudices, may reach your highest executive station; may draw around him, with some wise and good, many of the profligate, the corrupt, and the desperate; may seize your Treasury, and usurp the powers and duties of the Legislature; and, under perverted construction of the laws, and expressions of profound respect for the public good, and love for the convenience of the people, may disregard the whole spirit of your institutions; and yet may gain proselytes by the favors and rewards of offices and contracts, and hold in dread his opponents, by the fear of punishment; when his word may be truth—his opinions law—and adulation to him, the highest merit; and when the miasmatic minions which are generated and nourished in the corrupted atmosphere of corrupt power shall float on every breeze, carrying moral and political pestilence through the whole circumference of the land; and when pressed by the friends of freedom, in the confidence of the strength which he has secured, he may exclaim, “Is not the King’s name forty thousand names?” And he shall be answered—

“Fear not, my lord; the power that made you King

“Has power to keep you King, in spite of all.”

Then, sir, then, shall such a President and his subordinates, be permitted, by the mere act of violating law, to deprive the Senate of its powers, and thus paralyze the whole legislative action of your Government; for, without the Senate, the House of Representatives has no legislative capacity? Shall they, the more guilty they are, be the more powerful, in arresting you, in the discharge of your high and almost sacred functions? No, sir, no. The Senate will not—cannot—sanction the suicidal doctrine.









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SPEECH

OF

*Samuel L.*

MR. SOUTHARD,

ON THE

MOTION TO EXPUNGE FROM THE JOURNAL

THE RESOLUTION

ADOPTED BY THE SENATE, MARCH 28, 1834,

DECLARING

"That the President, in the late Executive proceedings in relation to the Public Revenue, has assumed upon himself authority and power not conferred by the Constitution and Laws, but in derogation of both."

DELIVERED

IN THE SENATE OF THE UNITED STATES,

FEBRUARY 27, 1835.

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WASHINGTON:

PRINTED AT THE OFFICE OF THE NATIONAL INTELLIGENCER.

1835.





## S P E E C H.

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Mr. SOUTHARD followed Mr. BENTON. He said, the resolution of the 28th March, 1834, declared, as the opinion of the Senate, that the President, "in the late Executive proceedings, in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both."\*

The resolution now under consideration (said Mr. S.) orders that of 28th March to be *expunged* from the Journals; and assigns the reasons for so doing. It is in the following words: "*Resolved*, That the resolution adopted by the Senate, on the 28th day of March, in the year 1834, in the following words: "*Resolved*, That the President, in the late Executive proceedings, in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both," be, and the same hereby is, ordered to be expunged from the Journals of the Senate; because the said resolution is illegal and unjust, of evil example, indefinite and vague, expressing a criminal charge without specification; and was irregularly and unconstitutionally adopted by the Senate, in subversion of the rights of defence which belong to an accused and impeachable officer; and at a time, and under circumstances, to involve peculiar injury to the political rights and pecuniary interests of the people of the United States."

The object of this resolution (said Mr. S.) is not to obtain an expression from the Senate that their former opinions were erroneous; nor that the Executive acted correctly in relation to the public Treasury. It goes farther, and denounces the act of the Senate as so unconstitutional, unjustifiable, and offensive, that the evidence of it ought not be permitted to remain on the records of the Government. It is an indictment against the Senate. The Senator from Missouri calls upon us to sit in judgment upon our own act; and warns us that we can save ourselves from future and lasting denunciation and reproach only by pronouncing our own condemnation by our votes. He assures us that he has no desire or intention to degrade the Senate; but the position in which he would place us is one of deep degradation—degradation of the most humiliating character—which not only acknowledges error, and admits inexcusable misconduct in this Legislative branch of the Government, but bows it down before the majesty of the Executive, and makes us offer incense to his infallibility.

I am neither unprepared, Mr. President, nor reluctant to plead, for myself, not guilty to this indictment; nor shall I hesitate to record my vote upon the issue which is forced upon us. Be the final close of the controversy what it may, I have conscientiously chosen my ground upon the questions which are involved, and will abide the sober and deliberate judgment of the country.

The resolution of the 28th March, which it is proposed to *expunge*, asserts that the Executive had performed certain acts in relation to the public revenue,

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\*The vote upon this resolution was:

YEAS—Messrs. Bibb, Black, Calhoun, Clay, Clayton, Ewing, Frelinghuysen, Kent, Knight, Leigh, Mangum, Naudain, Poindexter, Porter, Prentiss, Preston, Robbins, Silsbee, Smith, Southard, Sprague, Swift, Tomlinson, Tyler, Waggaman, Webster—26.

NAYS—Messrs. Benton, Brown, Forsyth, Grundy, Hendricks, Hill, Kane, King, of Alabama, King, of Georgia, Linn, McKean, Moore, Morris, Robinson, Shepley, Tallmadge, Tipton, White, Wilkins, Wright—20

and that these acts were in derogation of the constitution and laws. It is no longer necessary to debate the truth of the *first* assertion. The removal of the money *was the act of the Executive, on his own responsibility*, and is now claimed by him and his advocates as highly meritorious—demanding increased admiration, and renewed expressions of gratitude, from a thankful people. The character of the acts only, and the right of the Senate to express its opinion, are now in question.

Upon these, I have heretofore declared the views which I entertain, and I shall not trouble the Senate by a particular exposition of them, at this time. I regarded the conduct of the Executive as a violation of law. The statute gave to the bank the right to be the depository of the public money, and it was not provided, in that statute, that the President might, of his own mere will, take it away. The charter was a solemn contract between *the nation and the stockholders*, which the Government was bound to regard, by every consideration which can operate upon national honor and justice. For this contract, the *holders of the stock* had paid one and a half million of dollars, and performed most important and valuable services. It was a gross breach of the public faith to deprive them of their part of the bargain. If the bank had misbehaved, if its *directors* had made illegal claims upon the Government, if they had improperly opposed the election of an individual to the Presidency, or in any manner broken their charter, the mode of punishment was prescribed by law, and the courts of the country were open, in which, if guilty, they might have been condemned. The tyrant's *sic volo*—I will it—could not properly be exercised in such a case.

The conduct of the Executive was a violation of the constitution and laws, which place the control of the public treasure in Congress; expressly declare that “no money shall be drawn from the Treasury, but in consequence of appropriations made by law;” and also prescribe the mode in which it shall be done. Yet, in disregard of them all, the President took, and still keeps possession of, the whole treasure of the country, to the injury of our financial interests, and in utter contempt of the law and the constitution. It is true, Mr. President, that it was, and I believe still is, asserted that the Executive *had not taken the control of the public money*; that it was still under the regulation of law; as much so as if the deposits had not been removed. But what is the fact? Is it now in the *place* which Congress selected for its safe keeping? And, if it be not, who has taken it away? Is it in the custody of those who were appointed to keep it? And if it be not, who holds it? Why are both Houses of Congress engaged in framing laws to regulate the public deposits? Why have the Senate, by a vote in which several of the friends of the administration concurred, passed a bill on this subject, and sent it to the House? Are they legislating where no legislation is required? The conduct of all parties admits the truth of the allegation.\* The Secretary of the Treasury, under the orders of the President, now deposits the money where he pleases—removes it from bank to bank, at pleasure—takes such security as he approves, or no security at all—and controls it, in all respects, according to the dictates of his own discretion, and to accomplish whatever purposes he approves, without consulting Congress, or taking any direction from them. Nay, he decides what kind of money shall be received, and what shall not, in discharge of dues to the Government; and we are informed that he has even authorized receivers of the public revenue to accept claims against the Government, in some instances, in lieu of money. I am at a loss to know what power can be exercised over the Treasury which is not now exercised at the Executive will and pleasure.

But, sir, however sturdily the defenders of this usurpation may have heretofore denied that the Treasury was in the hands of the Executive, we have a witness who will not be impeached by them, and an authority which they will not disrespect. The President, in his message at the opening of this session, uses this language: “The attention of Congress is earnestly invited to the

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\*The bill was suffered to sleep in the House of Representatives, and just legislation was defeated, and the public money still left in the hands of the Executive.



"regulation of the deposits in the State banks by law." Now, if they are regulated in the State banks BY LAW, why this earnest appeal to Congress? And if they are not so regulated, it is not easy to perceive how they can be in the possession, or under the control of Congress, as Congress can only act by law in relation to this subject. It is a distinct admission by the Executive that the present condition of the public treasury is not one prescribed by law.

The President proceeds: "*Although the power now exercised by the Executive Department, in this behalf, is only such as was uniformly exerted, through every administration, from the origin of the Government up to the establishment of the present bank, yet it is one which is susceptible of regulation by law, and, therefore, ought so to be regulated.*" Mr. President, I neither admit nor believe that such a power was exercised before the establishment of the present bank; yet I admire the caution which *limits* the declaration to that period. When that bank was established, the deposits were regulated by law; they were put in the place which the legislative power, in its discretion, chose. And if they are not now there, if they are not now regulated by law, it has arisen from no act of the Legislature, but from the *orders of the Executive and the course of the Secretary*. It is that very act of *taking them away from the regulation of law* which the Senate disapproved in the obnoxious resolution of the 28th March last.

The message continues: "*The power of Congress to direct in what places the Treasurer shall keep the moneys in the Treasury, and to impose restrictions upon the Executive authority, in relation to their custody and removal, is UNLIMITED, and its exercise will rather be courted than discouraged by those public officers and agents on whom rests the responsibility for their safety.*" It would be somewhat difficult, for a plain mind, to reconcile this declaration of *unlimited power in Congress* to direct the places where the public money shall be kept, and also "*to impose restrictions upon the Executive authority in relation to their custody and removal,*" with the doctrines of the Executive protest against the Senate, which affirms, in words, that "Congress cannot, therefore, take out of the hands of the Executive Department the custody of the public property or money, without an assumption of Executive power, and a subversion of the first principles of the constitution."—[*Protest, April 15, 1834.*] But if the power of Congress on this subject be *unlimited*, as is most cheerfully admitted by me, how is a justification to be found for the removal of the treasure from the custody which Congress had selected? And why is the resolution, condemning the exercise of this unlimited power by the Executive, so harshly denounced? The law did "impose a restriction upon the Executive authority, in relation to the custody and removal of the money," and the responsibility was taken of spurning that restriction. And now Congress is called upon, and "earnestly," too, to impose others, with an assurance, which may give them confidence to act, that "its exercise will be courted rather than discouraged by those public officers and agents on whom rests the responsibility for their safety." I ask, who imposed upon these officers and agents this responsibility? No law of Congress; no legislative provision. It was the act of the Executive alone; and yet very harsh rebuke has been bestowed upon those who have declared that the Treasury was in the hands of the Executive and its agents, and not under the control of laws passed by the Legislature. May we not call, in our defence, the President himself?

Congress ought certainly to feel flattered by the assurance that the exercise of their high constitutional authority will not be *discouraged*, but will be even *courted* by officers and agents who hold their money. But notwithstanding this assurance, it will be necessary for them still to take care that they exert their *acknowledged and "unlimited power"* in the right mode; for it is added in the message, that "*it is desirable that as little power as possible should be left to the President or the Secretary of the Treasury OVER THOSE INSTITUTIONS,*" &c.; a distinct intimation that the money is, and must still be left in the State banks; but if it be left there, Congress may have permission to regulate it, by their "*unlimited power.*" Can contempt for the understanding of the people—can scorn for the legislative authority go further? The Executive



seizes and disposes of the public money, puts it where he pleases, and then assures Congress that they may regulate it where he has put it.

I do then insist that the public treasure is not now under the regulation of law, but is in the hands of the Executive; and, if I am in error on this point, pardon should be freely extended by those who still have "undiminished confidence" in the "purity of purpose and elevated motives of the Chief Magistrate."\* It was the violation of law—it was the assumption of the constitutional power of Congress over the Treasury of the Union—it was the act of the President in taking possession of the public money, and disposing of it *as he pleased and where he pleased*, that the Senate disapproved, and on which Senators recorded their votes. As one of them, I regarded the subject as immensely important, devoted to it the best powers of my understanding, and came to a conclusion free from all doubt.

But we are now required to *expunge* the *expression of our opinion from the Journals, and to erase the resolution*. And I, Mr. President, stand here a commanded man—ordered by the Legislature of my State to denounce my own act—to obliterate my own vote—to violate the Journals of this body—to degrade this high constitutional assembly—and to disregard my own sacred obligations to sustain and support the constitution of my country according to the dictates of my judgment. Sir, in such a condition, hesitation would be criminal; obedience would be treason against conscience and duty.

Mr. President, have we the constitutional power, right, or authority, to pass this resolution? to *expunge* from the Journals of the Senate the resolution which was passed and recorded at the last session? It is a solemn question. It requires a solemn answer; and must be met without evasion, and in its true import. The resolution does not call upon us to put upon the Journals, at this time, a declaration that we were then in error. It does not require us to rescind, or alter, or in any mode overrule, the former decision. The instructions of the Legislatures do not call upon us to do this, but to *expunge*. They knew—the mover of this resolution is not ignorant of the meaning of the term *expunge*. Obedience to the instructions requires us to *obliterate, erase, alter* the Journal; in substance, to tear from it the entry which is there made. Any thing short of this is *evasion*; it is *disobedience*. He who is instructed to *expunge*, and votes for any thing short of expunging, or any thing different from expunging, may evade his orders, but he does not obey them. He may cavil about the meaning, and tell us he does something which is equivalent, and which will satisfy the Legislature which instructed him; but he offers insult to them in the very act of professed submission. Are they ignorant of the meaning of their own orders or instructions? Or will they be satisfied with partial obedience? If they have the authority to command, shall their servant tell them, you did not mean what you said—you will be content if I construe your orders in my own way, and if I do, not what you did command, but what you *ought* to have commanded? This course will not answer. Mr. President, let us meet the question fairly and openly. The object of the mover, the object of the instructing Legislatures, is, to take out of the Journals what they choose to call the condemnation of the President, so that it shall remain there no longer. We are expected to follow the example of the English House of Commons in the case of John Wilkes; to order our secretary to obliterate the Journal; to stop the business of the Senate; command silence, and sit by while the act is performed. Can we do it? What says the constitution? In the third item of the fifth section of the third article, are these words: "*Each House shall keep a Journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the Journal.*"

The Journal which we are now called on to deface, is *the Journal* thus prescribed in the constitution. The resolution which we are to *expunge* is a part of *that Journal*. The yeas and nays have been entered upon it, and stand there in testimony—perpetual may that testimony remain—of the opinions and action.

\* Resolutions of New Jersey Legislature.

of the Senate. It has been published and scattered to the four corners of our Union. We may reverse our decision and change our votes, but can we *expunge* that decision and obliterate the record? In my judgment, it would be an infraction of the constitution, a sacrilegious violation of a document which has all the inviolability which the constitution can confer on any instrument.

The Senator from Missouri, *after great deliberation* upon the subject, has announced his opinion that we may *expunge*. He has told us, in substance, that the order of the constitution is that we must "*keep a Journal*," and that this order will be satisfied, if we write down, from day to day, memoranda of what we do; but that, having done this, we have obeyed the constitution, and are at liberty afterwards to erase from it what is incorrect and unconstitutional. This, I understand, to be his argument. And I must be permitted to express my astonishment at such a construction of this portion of the constitution. I will not say that it is suited to the times, lest it might be considered disrespectful.

We are to *keep a Journal*. May we keep it falsely? misrepresent our acts and votes? enter upon it what did not take place, or enter untruly that which did? May we state the ayes and noes *INCORRECTLY*? May we omit decisions which are made, and acts performed? May we insert those which have no existence? If we may not, the reason is that our record must be true and faithful. But if it must be true and faithful when made, have we the right, afterwards, at any period, to make it false and untrue? Does the constitution mean that we are to note down truly, day by day, our proceedings; and yet, that a week, or month, or year afterwards, we may alter it as we please—falsify it? May we send it down to posterity with a falsehood upon its face? Is this keeping a Journal in the meaning of the constitution? No, sir. The constitution had important objects in view in this provision, and it deals in no double meanings. It intended that an honest record of our acts and votes should be made for the information of our fellow-citizens, and that it should remain a perpetual testimony of our faithfulness or infidelity to the constitution and the interests of our country; where our cotemporaries and our posterity, in all times to come, might see not our deeds only, but the history of the legislation of the Government. Our constituents have a right to know what we say and what we do, and we have no right to withhold this knowledge from them; and I rejoice that mine may see and know all that I, as their agent, have done; and that there is no lawful power to hide it from them.

The consequences of this modern notion of expunging from the Journal what may be unpleasant or offensive to the existing majority, are calculated to alarm those who take an interest in the permanence and prosperity of our institutions. Shall I allude briefly to two or three of them? The striking of our clock, and the approaching dissolution of Congress, remind me that I must, on every topic, aim rather at brevity than fulness of illustration.

The changes of parties in our country are rapid. The possessors of the "*spoils*" to-day become the antagonists of power to-morrow. They who enjoy popular confidence now, may shortly find themselves bereft of that confidence, and sinking unhonored into the mass of the community which will no longer regard them with respect. Opinions alter with the interests and condition of the country; and honest, intelligent, and wise men, who have formed their policy on existing circumstances, are often obliged to give way to others better skilled in the approaching or expected wants and relations of the nation. All this does take place; all this may and will take place hereafter, in the progress of society. I am no railer at popular changes. I have as much confidence as any man in the intelligence, firmness, and stability of the people of this country; and certainly do not yield, on this point, to any noisy demagogue who supports to-day principles which he held up to scorn yesterday; with professions of devotion to the people on his tongue, and purposed deception and selfish ambition in his heart. I speak only of facts—changes have happened. If society shall progress and be prosperous and free, they must happen hereafter. It is the condition of every human society, especially when it is free. There are, there must be, frequent changes in public men and public



measures. Shall it be established as the constitutional doctrine, that on every change, the triumphant majority may erase from our records the acts and votes of their predecessors? If you pass this resolution, and it be established that we may alter and falsify the Journals, such may, and not improbably will, be the course of our future history. The worst men in power will have the strongest temptation to erase the acts of the best. The most servile devotees of the favorite of the hour will be most likely to seek his favor, by expunging whatever may be obnoxious to him, or an obstacle in the way of his purposes. Your Journal will cease to be a record of your acts, and may be made an instrument to aid the advance of corruption and despotism.

Observe the danger of this doctrine in another aspect. The Senate sits in secret, when advising the President upon treaties, appointments, &c. The record of their acts, with closed doors, is a part of the Journals. If base motives have governed; if treachery to the best interests of the people has been exhibited; if a responsibility has been assumed which may overwhelm the guilty when the Journal shall be published, and their conduct exhibited; how easily will this doctrine, now to be established, and this example, now to be given, enable them to conceal forever their guilt, and evade the account which the public might require! It were better to have no Journal of our secret sessions, but to leave every member to give such relation of our actions as his interest dictates, or his regard for truth might require.

Mr. President, will you look to another consequence? Entries are made on these Journals of the votes and proceedings which *create, enact, and give validity* to the laws of the land; and to all those acts which are enjoined on the Senate by the constitution—laws, treaties, appointments, judgments on impeachment, every thing. Shall we calmly establish the doctrine, that these votes may be expunged? and these constitutional acts be left unsustained by the authority which gives them sanction and validity? For, sir, even the proceedings and judgment upon an impeachment may as well be expunged, as any other item in that record. It is a process of *nullification*, new in the theory and practice of our Government, now first attempted, and whose consequences no man can anticipate or depict. For me, sir, it is impossible to bring myself to a belief in its correctness. The constitution commands us *to keep a Journal*. It must be *true and faithful*; it must remain inviolable; and when you shall have expunged any thing from it, you will have disregarded one of the plainest and most important injunctions of our great constitutional charter.

Such being the view which I take of this resolution, it is due to the respect which is properly felt for the Legislatures of the States who have enjoined upon us to vote for it, and it is due also to the long deliberation and the grave annunciation of opinion by the Senator from Missouri, that I should not omit to notice some of the reasons which he has presented for its adoption. These reasons I am bound to regard as the best which can be afforded. The Legislatures have furnished none. They have not reasoned; they have commanded. They have not sought to convince, but to control our judgments. Their resolutions are in almost the same short phrases. Their form might have been stereotyped here, and sent out “by authority” for sanction, to the extremes of the Union, and they would have returned to us in phraseology differing little from what they now contain.

The Senator has argued that we ought not to have passed the resolution of the 28th of March, because it was unjustified by fact, and he endeavors to sustain this declaration by the thousand times told tale of the misconduct of the Bank of the United States. We hear on this, as we do on *every* topic where executive action is in question, an incessant repetition of the bank—the bank—the monster bank. In that word all reasoning and argument are combined. Is the law said to be violated? We are told, the bank has been guilty. Is the constitution disregarded? The bank has misbehaved. Has Executive patronage been extended until it overshadows the liberty of the country? The bank is a monster. Do we seek to arrest the avowed corruptions of a Department? The bank has been corrupt. Do we ask to have the public treasure restored to the guardianship of Congress? The bank has interfered with



elections. Mr. President, I ought not to attempt an answer to such arguments; for I admit my incapacity to comprehend their application and force. Let us agree that the bank has been guilty of each and every sin laid to its charge; that it was unconstitutional in its origin, and has been base in its actions; does that justify the Executive in taking from Congress the custody of the public treasure; in disposing of the public revenue at his will; in trampling upon law and the constitution; in sustaining a Department in open and acknowledged misconduct? Sir, such reasoning evades the question. It sets up a false issue. I am not at liberty to suppose it to be designed to mislead public attention from the true inquiry, but such has been its effect. It is perfectly known that the issue most insisted on at the elections—most earnestly pressed by the party in power—was the propriety of rechartering the bank; an issue not presented by the proceedings of the Senate—not made by the resolution which we are called on to *expunge*. For one, sir, my opinion was founded, my vote was given, on the conviction that the acts of the Executive could not be justified; and I would have given the same vote, with or without reference to the recharter or the conduct of the bank. I desired to sustain the sacredness and inviolability of the laws; and the existence or character of the present or of any bank must have been, with me, a secondary and comparatively insignificant consideration. The correctness of the opinions of the Senator from Missouri about the bank may be admitted, and yet the resolution of the Senate perfectly warranted. The bank may have acted incorrectly, yet the Executive is still guilty of assuming and exercising a power not granted to him. Such was the case; at least such were my deep convictions. The resolution of the Senate was true, and was justified by the facts before us.

But, whether true or false, what has its truth or falsehood to do with our power to *expunge* it from the Journals? Does the Senator mean to affirm that whenever we may become satisfied that any act, resolution, or vote of this body at a former period was incorrect in principle, or unsupported by fact, that we may erase it, expunge it from the record? Has each succeeding Senate the power *thus* to sit in judgment upon its predecessors, and in this mode to *execute* its judgments? The assumption is too monstrous for argument. Under such a doctrine and practice, every change of opinion would lead to a change of the records of your Government and your Journals; and the *history* of your *legislation* would become a falsehood, scorn, and reproach.

It is further insisted that the resolution of the 28th of March ought to be *expunged*, because it contains an accusation of crime, and was an impeachment and condemnation of the President, without hearing or trial—a judicial, not legislative act, which we had no constitutional power to perform.

This reason, in none of its aspects, is sound. The resolution avers that “the President had assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both.” But it charges no criminal intent or purpose. It alleges no design, for corrupt objects, to violate his known duty. And criminal purpose is of the essence of criminal acts. An impeachment must charge wilful and corrupt motive. Judgment of condemnation is founded upon, and embraces, evil intent. The fact alleged in the resolution may be true, yet the President would not be properly impeachable. We, as his judges, could not condemn him, if he were on trial before us. The only mode by which we can reach the conclusion of the Senator from Missouri is, by the assumption of infallibility in the Executive. We must first decide that the President cannot err in judgment or opinion, without he does it corruptly. This being settled, if we then charge him with error in his proceedings, we charge him with corruption and crime. If we then say that he has done an act not justified by his powers under the constitution, we allege what may authorize an impeachment. On this question there may be a difference between the Senator and myself. He may, for aught I know, esteem the President incapable of error. I do not. I believe it quite possible that he should put a false construction upon his constitutional rights and powers, and that he may fall into even dangerous errors, without deliberate intent to violate the constitution and laws. When, therefore, the Senate expressed their opinion

that his proceedings were an assumption of power not conferred, they affirmed only their opinion of a fact which does not necessarily imply guilt worthy of impeachment.

The Senator has not, I believe, the merit of originating this invention to cast reproach upon the act of the Senate, or, if he has, he has rivals in zeal on this topic. Knowing well the popular devotion to the Chief, it has been the good pleasure of his advocates, every where, to rouse up that devotion, by vehement allegations that he was accused of corruption and crime. Attachment thus excited is not very acute in examining facts and discovering truth, but rallies promptly to defence. The movement has therefore not been without its effect, especially when connected with another equally incorrect allegation, that the President has been tried and condemned *without a hearing*. Without a hearing, sir! What were the acts which the Senate condemned? The removal of the deposits, and the proceedings connected with it. Was the President unheard upon that question when the vote was taken in the Senate? His official paper, which even one of our foreign ministers, perfectly versed in cabinet knowledge and secrets, regards as *AUTHORITY* for the *President's opinions* and intentions, and which is received as the guide of political faith by hundreds of thousands of our citizens, had devoted months, under his intimate observation, in defending the right and the expediency of the measure. The celebrated exposition of his conduct on the 18th September, under his own hand, had been published in every possible form, and read by every intelligent man. His annual message had developed his views, and his effort at justification. His Secretary of the Treasury had communicated his "reasons" in the most labored and ingenious paper which his talents could produce. And even upon this floor, the admired and skilful advocates of the measure had defended it with a zeal and industry which extorted applause. Condemned without a hearing! Why, sir, what more had he to urge? What new fact—what hidden view of the proceedings and of the constitution was to be developed? The allegations upon this point of condemnation and want of hearing, however intended—and I am bound to believe, so far as Senators are concerned in them, they were correctly intended—have served as an appeal to party passions, and additional fuel to party prejudice; but they are totally unsustained by a reference to the history of the case.

But, Mr. President, the resolution of the Senate is described as a judicial, and not a legislative act; and it is argued that we could not express our opinions because the President might be brought before us on impeachment. Let us try this notion by the constitution itself. What was the character of the act which we condemned? The constitution had given to Congress the control of the national treasure; Congress had directed it to be deposited in the bank—the President had seen fit to take it out of that depository, and place it in the possession of those whom he selected for the purpose. When Congress met, it was in their hands, and under his orders. It was to be restored, or it was to be continued, under proper regulations, where we found it. *We were required to legislate in regard to it.* We could not legislate without inquiring into the causes and reasons for, and circumstances attending its removal, and the condition of safety or danger in which it was left. These were presented to us, *in compliance with the law*, and by *the President's command*. Our duty was to form an opinion of their sufficiency; we could not avoid it. If we must legislate, we must form opinions what legislation is proper. The first step in our progress was to make up and express our decision respecting the condition of the Treasury. There was but one mode of escaping it, and that was base and servile. We might have said, it is the President's will; and it is not ours to find fault with what he has done, but humbly to aid, by our legislation, the execution of his designs. This did not happen to be the mode of reasoning in the Senate. It was not mine, sir. Let those who approve it condemn me. The resolution of the Senate was the expression of its opinion, preparatory to the passage of a law to regulate the Treasury. Such a law was contemplated. A law on the subject is now recommended by the Executive himself. The House of Representatives were engaged in discussing one during the last session, which was rendered necessary and proper solely by the



act of the Executive. Both branches of Congress have been engaged upon the same subject during the present session. Whether any law will be passed, cannot yet be safely predicted. It depends too much, I fear, on the Executive pleasure.

But, Mr. President, the motion which I am combatting goes upon the idea that our act was judicial in its character, and therefore we are restrained from our ordinary legislative action. Is this so? The constitution has prescribed certain limits to legislation in both Houses. These are to be regarded. But beyond these the freedom and extent of legislative action in the Senate is precisely the same as in the House. If there be restrictions upon us, not common to the Representatives, let them be shown. If there be not, then *they* must be restrained where *we* are restrained. And will it not hence follow, that neither we nor they can inquire and express our opinions of any Executive action? of any assumption of power? of any error in executing the laws? Or, has it come to this point, that we may express opinions if we approve Executive proceedings; but, if we do not, we must be silent? This seems to me the true result of the doctrine; and it is abhorrent to every idea of legislative independence—every sense of civil liberty—every sound construction of the constitution—and denounced by the whole practice of the Government. How often in our history has it occurred, that one or both branches have approved or disapproved of Executive acts? Is not our history full of such instances? One has been alluded to. When the Executive refused further intercourse with the British minister, Jackson, in consequence of his language and conduct, Congress expressed their approbation. It was a case of agonizing interest to humanity. Peace and war—treasure and blood—prosperity and adversity—national honor and disgrace, might have depended upon it. The Executive was assured that Congress and the people were prepared for the issue. But had Congress disapproved, must they have been silent—they in whose hands are placed the treasure, and peace, and blood of the country? Must the Representatives of the people's will have been regardless of them because the Executive erred? Or could the House have spoken, and the Senate been commanded into silence, lest they might be called to adjudge that the Executive not only erred, but erred corruptly? The doctrine that Congress may not express disapprobation of Executive action wherever the legislative power is to be called into exercise, is fit for despotism, but should find no countenance in a land of liberty. The notion that the Senate must be silent whenever there is a *possibility* that an Executive officer may be called to answer by impeachment, disrobes it of its constitutional power of legislation, and breaks down one of the guards which the people have provided for their safety. We were not silent, during the last session, in a similar case. When we became satisfied that the Postmaster General had been guilty of misconduct, and had borrowed money illegally, we said so; and the vote of every member in this body, who was present, stands upon your Journals in condemnation of his conduct. No vote was then given in his defence—no voice warned us that we were performing a judicial act, and that our legislative powers did not extend to the passage of such a resolution. Why was this, sir? What new light now shines upon us? Why are we not called on to expunge that resolution also? Is not the Postmaster General a high Executive officer? Is he not impeachable as the President is? And where is the distinction between the two resolutions? There is but one. One resolution relates to William T. Barry, a Postmaster General; the other to Andrew Jackson, a President of the United States, the head and idol of a party, who, we are advised, is to descend to posterity in brilliancy and splendor, while they who call his acts in question will be forgotten and unknown. There is, however, one circumstance which may remind the future of their names. They are inscribed, sir, on that Journal, from which power itself cannot erase them.\*

\* *Extract from the Journal of the Senate, June 27, 1834.*

“The question was then taken on agreeing to the first resolution in the words following:

“*Resolved*, That it is proved and admitted that large sums of money have been borrowed at different banks, by the Postmaster General, in order to make up the defi-



The true exposition of the constitution in regard to the Senate is this. We have legislative, executive, and judicial powers. These are separate and independent; the one neither enlarged nor limited by the other, except as the constitution has provided. When we are called upon to perform legislative duties, we must perform them, and perform them fully, in all their extent. If we are restrained from legislating because we must advise the President in his executive duties, where is the line at which we must stop? So with regard to our judicial authority. There is doubtless a constant intermixture of all those powers; sometimes in our actions an interference also. But this results from the will of the people who established this body and assigned to it its various powers and duties. And the question with us now is, not whether they acted wisely in so ordaining, but what did they ordain? We must perform our duties as legislators, as guardians holding a sacred trust from the people and for the people; and when we are called upon to sit in solemn deliberation upon offending officers, we must pronounce our judgments, though their offences be connected with the legislation which we ourselves have created and sanctioned. I am not ignorant that this combination of duties is hard and trying. It requires a heart as pure as an intellect clear. But it is the condition of our office. We must discharge our legislative duties, be the difficulties what they may. The resolution of the 28th March, which we are required to expunge, was one of those duties. We discharged it according to our best judgment, and the constitution forbids that our decision should be erased.

But, Mr. President, the Senator from Missouri has not only satisfied himself that the resolution was wrong, that we had no rightful power to pass it, and that we may obey the constitution if we *keep a Journal*, and afterwards expunge from it what we disapprove, but he cites precedents to show the propriety of the act. I do not scorn or disregard precedents. Though I do not admit their conclusive force upon my opinions, yet I delight to examine them as evidences of the reasoning of other men, in other times, under like responsibilities with myself; and if they satisfy my mind, I follow where they lead. If they do not produce conviction, I do not surrender my judgment to their authority. But their whole value, at all times, must depend upon their application to the cases before us. Let us cast a glance at those to which reference has been made. One is from Massachusetts. A resolution was passed during the late war, in a state of high political and party conflict. It was subsequently ordered to be expunged. The *propriety* of the resolution or its erasure it is not for me here, and on this occasion, to discuss. I look at the authority. Was there in the constitution of Massachusetts any provision requiring the Legislature to keep a Journal, to record the ayes and noes, and to publish them from time to time? If not, then the question there was one of propriety only, not of constitutional right to perform the act. By expunging it, the Legislature violated no command of their constituents in their highest exercise of sovereignty, the creation of their constitution. Now, sir, I have found no such provision in that instrument. I do find it in ours. Their Legislature did not violate their charter, but we shall violate ours if we pass the resolution upon your table.

The other precedent is from the British House of Commons, in the case of John Wilkes. He had been elected to Parliament by Middlesex. He was *expelled* I think in 1769, and was *re-elected*. He was declared ineligible, and

ciency in the means of carrying on the business of the Post Office Department, without authority given by any law of Congress; and that, as Congress alone possesses the power to borrow money on the credit of the United States, all such contracts for loans by the Postmaster General are illegal and void.

"And decided as follows:

"YEAS—Messrs. Benton, Bibb, Black, Brown, Calhoun, Chambers, Clay, Clayton, Ewing, Forsyth, Frelinghuysen, Grundy, Hendricks, Hill, Kane, Kent, King, of Alabama, King, of Georgia, Knight, Linn, Mangum, Moore, Naudain, Poindexter, Porter, Prentiss, Preston, Robbins, Robinson, Shepley, Silsbee, Smith, Southard, Sprague, Swift, Tomlinson, Tyler, Waggaman, Webster, White, Wright—41.

"NAYS—None."

Colonel Luttrell, who had received but a small amount of votes, not a majority, was admitted in his place. An effort was subsequently made to have the proceedings expunged from the Journal. It was often repeated, and always unsuccessfully until May, 1782, when, in a body of several hundred members, by a vote of 115 to 47 the order to expunge was given, and it was executed in the presence of the House. This is the precedent which the Senator from Missouri has taken for his model, and assures us that he will make continual claim until he succeeds as Wilkes did. Has he inquired into the authority of the British House of Commons in relation to their Journals? They have no written constitution. The people of England have never ordered their representatives to keep a Journal, and to record and publish their votes. The power of Parliament, in ordinary phraseology, is *omnipotent*. The House of Commons regulates its Journals according to its own pleasure, and by precedent and practice. However improper or incorrect the proceeding in regard to the Journal in the case of Wilkes might have been, no written provision of a constitution ordained by the people was violated. Our act must stand on different ground. The people, in the *plainest form*, in *written language*, in the *most solemn expression of their will*, have *commanded* us on this point. Shall we—can we—have we the power to disobey their command?

There is another aspect of this precedent to which I call the attention of the Senator from Missouri and of others: to the *nature* of the *matter* expunged, and the *controversy* which existed. The people had elected J. Wilkes to Parliament. He had been expelled. The people re-elected him. He was refused his seat, and a man whom the people had not elected was admitted in his place. The people were denied their constitutional privilege to be represented by the man of their choice. An alien to their affections, an instrument of the Crown, a man sustained by patronage, was thrust in as their representative. All this was done by *executive influence*, *usurpation upon popular rights*, and *disregard of the laws of the land*. The people were not submissive. They would have been fit for all the degradation which tyranny can impose if they had yielded. They did not. They petitioned, they remonstrated, they almost rebelled, and “Wilkes and Liberty” became for the time the watchword of freedom. But was it *John Wilkes* whom they regarded in their struggle? He was debased as a man, and worthless as a patriot, and without principle in the pursuit of his selfish aims. But in his person the sacred rights of British freemen had been violated; the privileges of election and representation had been prostrated by *executive* encroachment; the laws of the land had been disregarded; the money of the people and the public officers had been used to secure obedience to the will of the King; and the people forgot the unworthiness of the instrument which was in their hands, while they warred against the dangers which they foresaw from the increasing power and influence and patronage of the Executive Department. They demanded legislative enactments from Parliament, and they were yielded. They demanded that the evidence of the usurpation upon their rights should be erased, and it was done; done *by their order*, not the order of their inferior agents; done for their protection; done to secure their privileges; done to rebuke a House of Commons, which had yielded their rights for the gratification of the Ministry and the Crown; done *not* to relieve the Executive from an expression of the opinion of Parliament that the laws and constitution of the realm had been broken by him, but to rebuke the Crown and a servile Parliament, which had yielded to the will and influence of the Executive and his Ministry; done as much to condemn the King as the Commons, and in this respect much more nearly resembles the resolution of the 28th March, 1834, than the one upon your table. I commend this aspect of the precedent to the reflections of the Senator from Missouri, and others who may advocate the erasure of the Journal.

To urge us to the adoption of the resolution, the Senator has referred to what he chooses to regard as the condemnation of our act by the House of Representatives, that being one of the evidences of our error. It is not very parliamentary to urge one branch of the Legislature to opinion and action by the disapprobation of the other, even where it has been carried out into legis-



lation. And if it were true that such was our case, it would operate lightly on my mind. An opinion formed with anxious deliberation, as mine has been, does not yield merely to adverse opinion without argument and fact; nor does denunciation overcome it when unsustained by reasoning which produces conviction.

But, sir, is the fact correctly stated? Have the House of Representatives at any time expressed a direct opinion in favor of the conduct of the Executive in removing the deposites? Have they passed any resolution or taken any vote, which declares, in words or in substance, that the Executive proceedings were *conformable* to and not "*in derogation of the constitution and laws?*" I may have been negligent in observing their course, but I remember none such. Efforts were made to compel a vote upon that point, but they were fruitless. It was evaded; it was prevented by those who usually sustain the Executive. They would not—at least they did not—permit an expression of the House on that question. Why they avoided it, why they did not meet it fully, is for others, not for me to explain. If a majority of that body had in their consciences believed that the President had acted correctly, it seems to me that there would have been no escaping from the question; no laying it upon the table; no reluctance to express their approbation. That this was not done, is sufficient evidence that a majority of that body were in opinion adverse to the Executive conduct. It is much easier to avoid voting upon a question than to condemn a favorite. And the conduct of the House, instead of being a rebuke to the Senate, is a silent affirmation of the truth of our resolution of the 28th March.

It is true, I believe, that the House passed a bill regulating the deposites in the State banks. But this might be done, even when placing the money in those banks was condemned. It may possibly yet be done by the Senate, and by the votes of those who passed the obnoxious resolution. The public money is in those banks. It is there under the orders of the Executive. It is without regulation by law. It cannot be taken out and restored to the lawful depository without the permission of the Executive, or the vote of *two-thirds of both Houses*. Shall it be left *unregulated, at Executive will, in violation of all the principles of our Government?* This is the difficulty now before us; it was the difficulty when the bill was in the House at last session. And shall those who voted for the bill then, or who may here vote for some bill which shall restore the money to the government of the law, be regarded as approving the trespass which the Executive committed? They will feel themselves acting under strong necessity; a compulsion inflicted by the Executive act, and may yield so far as to pass a law to regulate the Treasury. No, sir; the House has not, by any vote, of which I am aware, condemned or rebuked the resolution of the Senate. Let the question be fairly put, in plain and direct terms: was the conduct of the Executive right? and if a majority shall be found there to affirm it, I will not deny that they differ from us in opinion, whatever influence the fact may have—but it can have very little, in giving us authority to expunge the Journal.

There has been, Mr. President, but one other suggestion or argument presented to us, which I can now permit myself to examine. The Senator informs us that the Legislatures of several States have *instructed* their Senators to vote for *expunging* the resolution of the 28th March last. This is true, sir; most true. He adds, that the people are moving in the same direction; and he prophesies that those who do not yield obedience, will be overwhelmed by the "mountain wave" of popular indignation. This may also be true. I cannot foresee the end of this question. But I am indebted for the argument and the warning. They require me to reconsider my opinions, and justify me in detaining the Senate, even at this late hour, by an examination of the ground on which he relies. What is it? The Legislatures have *instructed*, and therefore *Senators are bound to vote as they have directed*. It is always wise to understand accurately what is meant by the terms we use, before we attempt to reason with or about them. General and sweeping remarks are of little value; a precise statement of a question is always useful. What is meant by the "*instruction of a Legislature,*" as the phrase is now understood? It is not



*expression of opinion, advice, information, counsel, wish, request, direction, instruction, in its ordinary meaning*, which implies information given, and which may conduct the instructed into the path of duty, and into a compliance with the wishes of those who instruct. All this may be, and is, cheerfully conceded, not to the members of the Legislature only, but to every other citizen. The representative, no matter in what station, will most thankfully and gratefully receive every counsel and advice, as to the opinions and wishes of those whom he represents; will desire to conform to them, and feel that his own burdens are relieved, when he can have their judgment to guide him. But *instruction*, as now maintained and justified, is of a sterner character. It is *command—order by a superior*. It implies an unqualified right in the *Legislature* to dictate, and an unqualified obligation in the *Senator* to obey the dictation. It asserts that the *Legislature* has lawful authority to command the *Senator in all his official acts*, and that he must not disobey their orders on any point. It asserts, also, the duty of the *Senator* to resign, if he cannot obey; and the right of the *Legislature* to recall him, if he does not obey. The one is a necessary consequence of the other; they are united, and cannot be separated. Those who advocate the one, also advocate the other; and the practice conforms to the principle. When a *Legislature* has instructed, and a *Senator* disobeys, he is requested to resign, and give place to a more flexible agent.

It is in this sense that we are to view the question of instruction, and the argument of the *Senator* from Missouri. Has a State *Legislature* such right? Is a *Senator* subject to such authority? If such right exists, what is its extent? By whom may it be exercised? Whence do they derive it? And what are to be its legitimate and necessary consequences? It becomes not only us, who are now called to act, but it becomes also every intelligent citizen in this country, to examine these questions. They will be found to touch closely the nature of our Government, and the safety and permanence of our existing institutions.

I intend, in my remarks on the subject, to confine myself entirely to an examination of these questions, as they apply to State Legislatures and to Senators. That is the precise matter now before us; and I do not choose to enter into inquiries not involved in the resolution, and in the argument of the *Senator* from Missouri. I should by that course only bewilder and expose myself to misapprehension here, and to misrepresentation elsewhere. I will deal with the right of *legislative instruction*, not with the right of the *people* to control and influence their representatives.

What is the extent of this right in the *Legislature*? It is not confined, nor can it be, to one subject, or to one act; but embraces all, and extends to every function of the *Senator*—*legislative, executive, and judicial*. No advocate of it has attempted to limit it to any one branch of senatorial duties. It is, in its very nature, incapable of limitation to any particular class. If it may be exerted to direct a *Senator* how he must vote upon a *law*, or other *legislative matter*, it may also to govern him upon a vote upon a *treaty*, or upon an *appointment to office*, or upon an *impeachment for official misconduct*. Let those who deny this, exhibit the line at which it stops. They will find no one principle upon which it can rest, which does not justify its application as well to all as to any one of the acts of the *Senator*.

Can this right be limited to questions of expediency and policy? Will it not embrace constitutional questions also? Where is the sound distinction which limits it to the former? Sir, the right claimed, nay, the very case of last session, and the case especially which is now before us, that of *expunging the Journal*, are those of *constitutional* power and right, in which the Legislatures have instructed their Senators to disregard express provisions of the constitution. And the claim requires obedience on every other constitutional point which may arise, and on which the *Legislature* may please to instruct. The *Senator* must yield his conscience, and his judgment, and his official oath, on them all. He may not deliberate where he is commanded. He must obey or retire.

And, Mr. President, this pretended right may be exerted on questions, upon which the *people* themselves have not deliberated, nor expressed their opinions;

nor given their instructions to their agents, in the State or out of it. The claim is not to instruct Senators where the *people* have directed that they should be instructed, and on points upon which they have made up and uttered their opinions, but upon all which the members of the Legislature may please. If the Legislature may instruct, they may do it where they choose, not where the people direct. Questions may, and often do, arise after elections, which were not within their contemplation at the time, on which they have not been consulted, and on which their wishes are not and cannot be known. It was so in the case of the deposits. The right and propriety of the Executive action had not been submitted to the people. They had not been asked for their judgment in regard to it. And so it may be in any other instance. The Legislature possessing the right may exercise it, without a previous submission to the popular will. This, then, is the *extent* of the right of instruction claimed for the State Legislatures. It is to command the Senator, on every *question of expediency and constitutional power*, whether the *people* have, or have not, expressed their opinions upon it. A right so controlling ought to rest on no questionable grounds. "It is thus written" should be the justification for its admission and its exercise.

By whom is it to be exercised? By the members of the *State Legislatures*, and *because they are members*. They may have been elected at a time of no excitement, when no great question called the people to the polls, when the point on which the instruction is given had not arisen. They may have been elected upon partial and local grounds, for reasons confined to a single township, or county, or State, for temporary causes, having no connexion with national questions, and when the voters looked only to local legislation, and had not the slightest intention, by choosing them, to express their views in regard to the interests of the Union, or the construction of the constitution, or they would not have elected them. They may have been elected by a *small minority*, by a plurality, by the votes of one-third or one-fifth of the legal voters in the county; and when, in regard to general politics, they do not truly represent the majority of the people of the county.

They may, when in session, constitute a majority of one or two of the Legislature; or if some be sick or absent, even a minority of the body. All these circumstances are of daily occurrence. No man can reflect a moment without recollecting them in his own State, as the common results of elections there. Yet no one, nor all of them united, create an impediment to the exercise of this power of instruction. They are members of the Legislature, and, *as such*, they claim to exercise the *right to speak for the people, and the whole people, without consulting them*, and by an authority inherent in their office. Do they possess it under our system of Government? If they do not, if it has not been conferred upon them, it is an assumption by them of the rights and authority of the people. All exercise of power not delegated is, in our country, and under our system, *usurpation*. Every agent in every office, from the highest to the lowest, has his prescribed limits—limits fixed by the people, the only source of authority; the only sovereign power which is inherent, undelegated, and underived. The constable can exercise no authority given to a justice; nor the sheriff to the court; nor the member of the Legislature to the Judiciary or the Executive; and so it is with every other public officer. Has, then, this right to instruct Senators been conferred upon the members of the Legislature? Is it a part of their prescribed duty?

It belongs to this debate, and to the position which I occupy, that I should be explicit upon this topic. I shall not evade it, but submit my views without disguise, confident that they will be received, here and elsewhere, with the candor which appropriately belongs to such occasions, and be treated with the fairness due to a public agent to whom an important trust has been confided. I deny the binding authority of legislative instructions to Senators; I deny that members of the Legislature have a right to command me to do what I regard as a violation of the constitution, and to recall me, if I do not obey. There is a *sense in which*, and there are *subjects on which*, I do not deny their right to instruct, and these I will endeavor to explain hereafter; but I am now discussing the question as it is presented to us, and justified as an un-



qualified right, depending on their discretion alone to command me, and to require my obedience or my resignation. This doctrine has assumed momentous importance by its recent exercise in the Union. *Several State Legislatures* have been occupied in the high office of *instructing, supervising, commanding* their Senators. How many more will think it expedient to follow the example is yet to be seen. One or more have requested members of this body to resign. It is now used as a means both of annoyance and expulsion; and if it be continued, and become the settled doctrine, will shortly change the whole theory of our Government. It will degenerate into an ordinary weapon of party warfare; and may hereafter be used under the influence of high temporary and party excitements, in moments of blind personal devotion to a chief, by intrigue, personal interests, and resentments—under any or all those circumstances from which danger to “our republican system” is to be apprehended.

Whence, then, the power? It can come from two sources only; the constitution of the State, and the constitution of the United States. They contain the grants of power to all officers and agents of the people, and neither legislators nor others can rightfully perform acts not authorized by them, and the laws passed in conformity with them. This is the *democratic, the republican doctrine* of past times. It is the doctrine of *freemen, under free and limited institutions*. Let not those who now make so noisy a boast of their democracy and love for the rights of the people, discard it, either in theory or practice.

No State constitution, so far as I am informed, gives this power, *in terms*, to the Legislature. The constitution of my own State affords no apology for it. It confers the *legislative power* on the two branches—the Council and Assembly; but this legislative power could, by no possibility, have referred to and embraced this right of instruction or command, when that constitution was formed. The Senate and Senators were then unknown. They were not, nor any thing which resembled them, within the contemplation of its framers. It came into existence before the declaration of independence, while we were yet colonies, but in a state of rebellion. Although not the oldest in date, it probably went into actual operation before any other free written constitution on this continent, which was created by freemen for their own government. It was formed in an hour of alarm and calamity, in compliance with the advice of Congress of the 10th of May, 1776, “to provide it, as best conducing to the happiness and safety of their constituents in particular, and of America in general.”

Will it be suggested that, as all legislative powers in the State were vested by it in the Legislature, this power must be regarded as embraced when the occasion for its exercise arose on the establishment of the General Government? Before this suggestion can have the slightest force, two propositions are to be proved. First, that the power of instructing Senators is a *legislative power*. Second, that the *formation of the Union* did, or could, without specific provision, *confer new powers* on the Legislature of a State. Now neither of these propositions can be maintained. The power in question is no more legislative than it is executive or judiciary. The instruction may relate to acts of the latter as well as former character. And the fact that new powers of government were conferred upon other agents could not enlarge those of the legislative agents then in existence. I admit that the people of New Jersey, or any other State, when they made their general compact, the constitution of the Union, might have provided that their Legislature should exercise this, or any other authority; and if they had done so, it would be a justification for their exercise. But did they do this?

This inquiry calls up this compact between the States. Does it give this power? Its terms and provisions, and *they only*, must answer this question. The constitution of the United States confers nothing on any one but what it declares that it confers. Examine it, scrutinize it, and tell me if this right of instruction is contained in it, either by express grant or by the most forceful implication which ingenuity can devise. There is not one word which can be tortured into the admission, and its whole theory and object are adverse to



it. Where does it declare or admit that the State Legislatures may *control* the *Senate*, or that they are constituent members of it? Yet this is the fair result of the doctrine. If the Senator obey the instructions of the Legislature against his own convictions of duty, he ceases to be a free agent, but, as the obedient agent of others, records not his own vote, but that of the Legislature. If he cannot obey, and is driven to resign, another is substituted who does record the vote, and thus the Legislature's decision becomes a part of the votes and Journals of the Senate; and the State Legislature is, in effect, a member of the Senate of the United States. This is not the position which the constitution intended it to hold. It has authority to elect members to represent the State in that body; but when that act is performed, its authority and duty cease together. The constitution goes no further; gives it no other power. The people never intended that the Senate, one branch of their General Legislature, should be subject to the dictation and control of *one* of the branches of the Government in the States. The whole theory of our system is the reverse of this.

It was formed to avoid the interference, by the States, which had rendered the confederation inefficient. It was intended to be capable of sustaining itself and directing its own movements. It was not designed for a narrow territory with a few inhabitants, like one of the cities of Greece, where the whole people could meet, decide upon their interests, and appoint agents to execute their already declared objects; but to extend over a territory wide as the dominions of Rome; embracing not thousands, but millions; acting upon the people of many distinct States, bound together by the terms of their contract, in which was one great, and, in its mode of action, essentially new principle—that of *government by representatives*, who, although they were selected by the particular portions, were also to represent the whole, and vote in the government of the whole, and for the whole as well as for their own particular part. To subject these representatives to the dictation of a single branch of the local government of one of the portions, would counteract the very purpose of their creation. To insist upon it, is to disregard the solemn compact which the States have made with each other. But will it be urged that the Legislature elected the Senator; that the Senator is a representative; and the representative is bound to obey his constituents who elected him? It must be first proved that a Senator *represents* the Legislature. An admission of this right in the *constituent*, in its *utmost latitude*, does not *touch the question*. The question is, *Does a Senator represent the Legislature of the State?* Are they and they only his constituents? When and how were they placed in this high position? The members are, themselves, but temporary representatives of detached portions of the people; elected annually, and to be discharged at each election, whenever the sovereign pleasure of the people who chose them may will it. Who gave to them this power to control and to dismiss others who represent this same people, acting in their united and aggregate capacity? The Senator represents the Legislature no more than he represents the Judiciary, or the Governor. The Governor, for the time being, represents the people, and exercises the executive power of the people of the State; shall he instruct the Senator in the discharge of his executive duties; when, for example, he acts as a party of the treaty-making power? The Supreme and other courts represent the people, and exercise the judiciary power of the people of the State. May they also instruct the Senator in the discharge of his high judicial office, that of impeachment? Or shall the Legislature assume to dictate to the Senator, in all the departments of power, although they themselves possess only those belonging to one of the departments? The sound doctrine under our system is, that the Senator represents not the Legislature, the Executive, or the Judiciary of the State—but the State itself—the whole State—in its united and aggregate character—the *people, as bound together in one political and social body*. And the terms on which he represents them are to be found in the constitution of the Union, which the State aided in forming, and to which it has given its assent. And in that great instrument, no condition is to be found which requires him to obey the Legislature of the State or be dismissed from office.

In this exposition of the representative character of a Senator, and my denial of the right of the *Legislature* alone to control him, *especially on great constitutional questions*, I fall far short of the doctrine of the present Chief Magistrate of the United States; and I look for countenance and support to his advocates, although I cannot come up entirely to his standard. If I understand the doctrines of the PROCLAMATION, which obtained for him unbounded applause, and every letter of which has been declared worthy of being set in gold, he denies control, not in the Legislatures only, but in the States themselves, over the representatives in Congress. He says: "The people of all the States do not vote for all the members; each State electing its own Representatives. But this makes no material difference. When chosen, they are all Representatives of the United States, not Representatives of the particular State from which they come. They are paid by the United States, not by the State; nor are they accountable to it for any act done in the performance of their legislative functions."—"And however they may, in practice, as it is their duty to do, consult and prefer the interests of their particular constituents, when they come in conflict with *any other particular or local interest*, yet it is their first and highest duty, as *Representatives of the United States*, to promote the general good."

Sir, this is one of the strongest doctrines of *consolidation*. It is not *Democracy*. It is not *Republicanism*. It passes far beyond the avowed principles of *Federalism* in 1788. If it be true—and what friend of the administration here or in the State Legislatures will deny it—I, as a Senator, do not represent the State of New Jersey; nor am I accountable to it for any act which I may do in the performance of my legislative functions. How then is it possible that I can be accountable to the *Legislature alone*, and that they can control, command, instruct, remove me? Let the Senator from Missouri or the members of the Legislature explain.

But I beg not to be misunderstood. I do not cite this as my own doctrine. I am a representative of New Jersey, and although bound to have respect to the general good, I hold myself accountable to the State, *in all the forms of the constitution*, for the manner in which I shall discharge my office. But I protest that those who advocate the doctrines of the President have no right to condemn my refusal to subject my conscience and judgment to the keeping of a few members of the Legislature, when I am endeavoring to protect the constitution from violation, and seeking the general and permanent prosperity of the country. *They are not the State.*

The principle to which we have been adverting—that of election and representation, as conferring the right of instruction on the Legislature—cannot stand when brought to the test of examples.

The Legislature of New Jersey elects the Governor, the judges of the Supreme Court, the clerks and surrogates. May they, therefore, instruct and control all those officers in the discharge of the duties assigned to them by the constitution and laws? The chancellor, in his decrees; the judges, in their judgments; the clerks and surrogates, in their official acts? And if not, then, why not? They elected them; they may, when their offices expire, refuse to re-elect them, and appoint others. Yet instructions would be, in regard to all of them, inoperative—and worse, an inexcusable interference. Then why may they instruct a Senator? His duties and power and rights are as clearly defined as theirs, and by as high and sacred an authority. He is also further removed from them and their immediate duties than any of these officers. The regular legislative action in the passage of laws prescribes rules for the latter; whilst the Senator is an officer in another portion of their Government, to which their legislative powers do not extend, and in which other States in the Union have an important interest and concern.

Take another example. The electors choose the President and Vice President of the United States; may they also instruct them? and why not? Is it that the body of electors is dissolved? And is not the Legislature also dissolved? The legislative power always exists, but the members, for the time being, give the instruction. And where are they? How many of those of the last year, who first instructed on this subject, have ceased to occupy seats in



the body, and may never return to it? To make the case precisely parallel—suppose the Legislature, when it elects a Senator, and before he has entered upon his office, instruct him how he is to conduct himself. Their right exists then, if at any time. And suppose the electors of President were to do the same thing before they close their office. Which would be most reasonable—most just—most within the spirit of the constitution? Or, is it that the President represents the whole Union, and not the people, or the Legislature, which has chosen one body of the electors? And does not the Senator, to a certain extent, do the same? When he makes laws or approves treaties, he does it for the whole, not a part. When he consents to the nomination of an officer, he appoints him for the whole, and not a part. And when he sits upon an impeachment, he pronounces the high judgment of the combined nation.

I would further suggest that, if it be *election* which confers the power, then it must belong to those only who elect, and their successors may not interfere. If it be *representation*, then the Senator does not represent the Legislature, and they can, therefore, have no right in the matter except as they may be specifically authorized by the State, by the aggregate people of the State, to give the instruction. I have heard of no such authority or instruction having been given to them. If it be the State, as a State, which has the right, then the Legislature is not the State, and the Governor and the judges have equal authority to join in these instructions.

If representation gives the power, it must be because the representation is confined to those who instruct. If it extends to others, they must be consulted, and may object. But the doctrine of the President is that the Senator does not, under our constitution, represent the Legislature or the State. He represents the whole people of the Union, and must consult the general welfare, without regard to the State.

Once again: The Supreme Court of the United States represents, in the exercise of its judicial authority, not the States merely, but the whole people of the Union. It is the judicial power of the people which acts through them. Every portion of our whole system is representative. May they also be instructed in their duties? May the States, or may Congress, or may the President and Senate, who appointed them, instruct them? If the right rests upon election or upon representation, it will be difficult to excuse them from what is called the voice of the people, speaking through their immediate representatives. The absurdity of the idea relieves me from argument on this point.

If the doctrine be that, because it represents the people, the Legislature is authorized to judge for them when Senators need instruction, why may not Senators also judge when members of the Legislature need instruction? The members represent counties from which they are sent, and, united, represent the State; their majority forming the decision. So do the Senators represent the people of the State—the whole people, in its aggregate character, as people and State. The truth is, they are both equally representatives of the same people, and neither has the right to interfere with and instruct the other.

Upon this topic it is proper for me further to inquire whether the right of instruction be *inherent* in the members of the Legislature, as such, or whether it results from the *fact* that they *represent the opinions* of a *majority* of the people of the State? If the former, the answer is already given. If the latter, then, I inquire, may it not and does it not often happen, from the unequal division of parties in the several counties, that a *minority* of the members of the Legislature do actually represent a *majority of the people*? The case has not been uncommon in our history. In such case have the *minority* a right to instruct? And by what principle or rule of justice, or of representation, will you deprive them of it? And may it not be added, that the only value of the instruction is, that it does speak the sense of a majority? But to make that sense efficient, it surely cannot be necessary that it should assume the form of instructions. If the representative knows it, he should, by this principle, be equally bound to obey it, whether the Legislature becomes its mouth-piece or not. Now, it so happened that my predecessor held his place in the Senate for several years, with political opinions and preferences opposed to



the known and acknowledged opinions and preferences of the majority in the State. Yet he neither retired, nor have I heard any censure bestowed on him by the ardent supporters of this doctrine. It was right in him because he thought with them; is it wrong in me because I differ from them? There are other similar, and even stronger, instances with men who have now all the honors of democracy, and all the confidence of the Executive.\*

I respectfully declare then to the Senate, that I am not able to discover, in any one of the sources of authority, sufficient ground upon which the right of the Legislature to command and compel me to obey can rest. And I confess, Mr. President, that I feel no solicitude to find it there or elsewhere. The consequences of the doctrine, if it were established and made the rule of practice in our country, would necessarily be such as I cannot contemplate with any satisfaction. They would uproot our constitution from its foundations; make legislation, both in the General Government and in the States, a mere system of electioneering, and augment the power of intrigue and party violence.

Permit me, sir, to call your attention to a few of the consequences.

In the case before us the instruction requires us to *alter our Journal*. If the *instructing Legislatures* have the right to alter it, others have an equal right; they may find fault with other entries upon it, and direct their erasure; and our own Journal will no longer be under our control, but must be made up and kept as the Legislatures of the States may dictate. The constitution in regard to it would become a dead letter.

The next consequence would be to destroy the tenure by which Senators hold their offices, under the express command of the constitution; and instead of leaving them calmly, and with an honest eye to the public good, to the discharge of their solemn functions, would render it necessary for them to look to annual elections in the States to secure their friends, and preserve themselves from vexation and recall. It would convert them from the dignified representatives of the rights and honor of States, into the paltry intriguers for popular applause.

The constitution expressly declares that Senators shall be chosen "*for six years*." Does this mean that they shall be *removable at the will of the Legislatures*? Can any one believe that such was the intention of this article? or that its spirit is not directly violated by the assumption of the power of recall? No argument can make the words or the meaning more clear. But, in times of party excitement, when new principles are advocated, it is often useful to look back to historical facts, that we may be reminded of the nature and objects of our institutions, and not causelessly violate or disregard the purposes for which they were created.

With those who have studied the history of our constitution, no doubt can exist on this point. By the fifth article of the *Confederation*, of July 9, 1778, it was expressly provided, that delegates to the general Congress "should be appointed annually, but that the power should be reserved to each State to recall its delegates, or any of them, at any time within the *year* for which they were appointed, and to send others in their stead for the remainder of the year." Annual appointments and the power of control and recall were thus secured by that *Confederation*. When the Union was formed, this provision was fully before the convention and the people, was considered, and was omitted for the express purpose of excluding this power of control over the Senator, and to secure to him the term of *six years*. It was not carelessly or thoughtlessly done. It had not only been otherwise provided in the *Confederation*, but every man who had to pass upon the constitution knew the article and the *practice*, and was in the habit of seeing its exercise, and familiar with its effects: and they united in exploding the provision from the new Government; the convention which formed it and the conventions in the States concurred. No amend-

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\*Among the instances referred to may be mentioned Mr. Chandler, Mr. Woodbury, Mr. Dickerson, General Smith, Mr. Livingston, and Mr. Morris; all of whom have been rewarded (at least none of them have been punished) for retaining their seats in the Senate while a majority of the people of their States were opposed to them in opinion.

ment was proposed by any State on this point—an argument conclusive to my mind of the intention of the instrument, and persuasive, too, of the wisdom of the plan. I should regret to see that which experience had taught them to disapprove introduced now, and in violation of the words of the constitution.

The length of time fixed for the Senator was a subject of earnest debate and division in the convention; but why debate it and divide about it, if the power was reserved to control and recall the Senator at pleasure? In the greater number of States this article was agreed to without difficulty, and especially so in New Jersey, where it was, I believe, unanimously adopted. In one or two of them objection was made to it, but the objection was then triumphantly answered; and the constitution was adopted in them with a full knowledge and perfect understanding that the power was denied to the States and to their Legislatures. In New York, the question was largely discussed by Mr. Lansing, Chancellor Livingston, and others, and an amendment was proposed to give the power of recall, but it was rejected. (See, 1 Elliott's Debates, 257, 272; 3 do. 303.) The sense of the people at that day was almost universally against it. Are we now wiser, or more pure in our love of liberty and republican principles, than our fathers? They formed the constitution as it is; they fixed the term of office for the Senator at six years; they denied the power of instruction and recall; and with them I am willing to err on this occasion. I am, at least, not willing, by my own act and consent, to see the constitution, as they made it, and as they intended it, disregarded and violated. If they erred, let their work be amended; but, while it stands, let it be inviolable.

The term of the Senator is not only changed by this doctrine, but he is converted into an officer dependent on the will of the Legislature annually, or, as is sometimes the case, particularly in Rhode Island, semi-annually elected—a tenure more uncertain than any under the Government, unless, indeed, we adopt the new assumption that every Executive officer holds his place at the mere will of the President, who is not responsible for the manner or the motives of his dismissal.

It may, it often does, happen that the political character of the Legislature is frequently changed. Upon this theory, there must be a new Senator upon every change. In Rhode Island, if I recollect correctly, the changes have been such that she might have had, nay, ought to have had, six Senators in two years. So, in Ohio, last year she instructed her Senators; one of them disobeyed: if he had resigned, the present Legislature, which is of a different political aspect, would have instructed his successor, and we should have had two new Senators upon the floor, and the State had five in a little more than one year. The rebellious one of last year might have been restored; unless, indeed, the Legislature should, as they ought under such circumstances, spurn him from their confidence for his servility, as destitute of that moral courage and independence of character, without which a public agent is a public curse. The history of my own State is not destitute of facts to illustrate this doctrine. The changes which have taken place in the political parties there, since 1824, would have given to us some six or eight different members, and this resulting from no versatility or changeableness in the character of her people. The number of our counties is small—only fourteen. The parties throughout the State have long been nearly balanced. In several of the counties, the change of a few votes, or the neglect of a small number to attend the polls, would not only give a new representative in the Legislature, but change its political character; a little more than one hundred votes, in one or two of several counties, would have changed the late instructions. There are, I believe, about twenty members of the majority who hold their seats by an average of not more than one hundred and twenty votes; some of them by less than one hundred. Suppose there should be a small alteration of opinion, resulting from some general or local cause; the political aspect will be changed. Shall the Legislature again instruct; drive the recently elected Senator from his seat, before he has had time to become familiar with it; and restore the one whose office is about expiring, and of whose character and virtues, public and private, I feel restrained from speaking?

I beg that the effect of this doctrine upon the Senate may be considered.



It was intended to be the most permanent and stable body under the Government; the equal representative of that portion of sovereignty which the people chose to leave in the several States; a constant and vigilant check to the encroachments of Executive patronage and power; and a temporary obstacle to the sometimes rapid changes of popular feeling and opinion; securing regularity in the action of the Government at home, and holding out to other nations a fit ground for confidence in our stability and faithfulness.

To insure these high objects, a term of six years was granted, extending beyond the official term of one Executive, and reaching to the middle of that of his successor; and extraordinary powers were combined, legislative, executive, and judicial, and duties imposed sufficient to strain the strongest powers of the strongest mind, and calling upon members for the exertion of a pure integrity, an enlarged intelligence, and unquestioned firmness. He who shall be competent and faithful enough to meet the requisition, is entitled to admiration and applause. Yet it is this body, possessing such powers, and designed to be thus permanent, which the doctrine that I resist would render the least steady, most variable and unsettled of any in the Union or in the States; acted upon at every alteration of opinion, as whim, caprice, or party feeling might dictate. The changes of position in its members would resemble rather the alternations and mazes of a country dance than the movements of one of the most elevated legislative assemblies on earth; and resistance to Executive encroachment by them would be rendered impracticable—hopeless. Whenever it was attempted, it would insure the bitterest assaults upon and abuse of the Senate; create an effort to displace the obnoxious members, and break down its constitutional character and authority.

Nor would its effect upon the *proceedings* of the Senate be less deplorable. A law is under consideration; a prevailing party in one or more States takes an interest in it; its orders are transmitted, and the law is passed or fails, as the order may direct. An appointment is proposed; similar instructions enforce its success, or defeat it. A treaty is sent for concurrence; it is in the power of the State Legislatures to cause its rejection. And all these orders may be the effect of local and partial interests, in total forgetfulness of the general good. May I beg the Senate to look at another instance. We may be sitting as the highest judicial tribunal known to the constitution. A high officer is before us upon trial. His character—fame—rights as a citizen—more than life—depend upon our judgment. We have listened to the evidence, deliberated upon the law, and are prepared for our decision under the solemn sanction of our oaths. At that moment a Senator rises in his place, and, holding in his hand an instruction from his Legislature, announces to his brethren that he is commanded, against his conscience and his convictions of justice, to pronounce a sentence of condemnation on the accused. What would be the sensations of that moment? What the estimate of this right of instruction then?

Will I be told that such examples are imaginary? that to suppose their existence is an impeachment of the intelligence and integrity of the members of the Legislature? I answer, are they alone the individuals who will not abuse power for party or other purposes? Are not guards necessary for them as well as others? Is it any more improbable that they will command Senators to disregard their oaths when passing laws and making appointments than when sitting as judges? Is it any more criminal in us to obey against our consciences when we are passing sentence or impeachment than when we violate the constitution?

But, Mr. President, look at its effects upon the States. In the distribution of legislation between the General and State Governments, the latter was designed to regulate those matters of local and domestic interest upon which the ordinary prosperity of mankind depends—the rules of property, reputation, life, rights of citizenship—to have the parental guardianship of private life and social tranquillity. To exercise it wisely and faithfully, intelligence and virtue in the members must be accompanied as far as practicable by exclusion of extraneous and agitating questions. But this doctrine, by making the question of who shall be the Senator one of constant and ceaseless recurrence, would convert our legislative assemblies into the established arenas for the struggle and



conflict of Senatorial and Presidential parties. The inquiry at State elections would not be who is most fit and competent to regulate our domestic interests and rights, but who will vote for the recall of the Senator, and put some other, some favorite political partisan, in his place.

It would also have a tendency to induce servility to men in power. The existing administration would naturally desire the removal of such as formed an impediment to its wishes, and call upon the party in the State Legislature to remove them and substitute its friends. And so long as it is a favorite maxim that "a measure of the administration is of course a party measure, and as party men we are bound to support it," they must obey, or be thrown into opposition, and denounced as unprincipled turncoats and apostates.

And in nearly equal divisions of parties, or the accidental or necessary absence of one or more of the majority, it would put it in the power of a *minority* to bind Senators by orders, having all the forms and sanctions of legislative authority. It would direct the assaults of intrigue and corruption against those of the majority, who might be deemed least competent to judge, or most accessible. They would be invested with a temporary and unnatural importance—courted—seduced—drilled—driven. It would change the legislation of the Government from a system of consultation and deliberation, comparison of opinion and interchange of intelligence, into one in which the members would serve but as echoes; in which they would not be permitted to exercise their own intelligence, but must seek to understand the command which is given, and servilely obey it. It has been well remarked with regard to the tenure of office, that, if its exercise and its continuance depend upon the mere pleasure of the appointing power, unsuitable men will generally be chosen, because without reputation or principle men are always most obsequious to those who make, and can unmake and destroy them. Their standing with the people is temporary and unsubstantial: they feel this, and will rest upon the arm of power, not upon the people, to sustain them; while dishonorable compliances will be demanded in vain from men of better principles and higher character; for, if removed from office, they will but step back to that position of credit and respect and honor and confidence among their equal fellow-citizens which possession of office did not give, nor can its loss take away, supported by conscientious rectitude and integrity and talents, with a just reliance on the sufficiency of their own character to sustain them. The doctrine is well suited to the obsequious representative who is prepared to compromise his own dignity and conscience rather than lose his office; but surely he who shrinks from duty with this fear is unworthy of respect as a man, and still more unworthy to be the representative of a free, a generous, a fearless people.

I dread, too, that this doctrine, if it shall obtain the sanction of the people of the United States, will be made, in times of party excitement and rigid party discipline, a weapon of tremendous power over a minority, which may deprive them of that equal protection which all our institutions guaranty, and render them the slaves of the majority, not the subjects of the laws. Should the cords of party be so tightly drawn that members who disapprove some important measure, and have even prepared resolutions or expressions of disapprobation, shall be compelled to withhold them and unite in measures of applause—should it occur here, as it has occurred occasionally in all free countries, that some artful and ambitious man, with humble professions of devotion to *popular* rights, but whose real character is concealed; some "veiled prophet" of liberty, some "great Mokanna" of politics shall be advanced to power, who is disposed to use the confidence of the people to enlarge the exercise of his authority, and remove every obstacle out of his way, what instrument can be so efficient in his hands as this doctrine of instruction and recall of Senators, whereby they will be deprived of that tenure which would enable them to survive the pressure of the moment, and stand by an assaulted constitution? All that he and the instruments of corruption around him—the *instrumenta regni*, as the historian calls them, in the times of Roman despotism—all that they will have to do will be to issue the form of a resolve to their advocates in the Legislatures of the States. They, confiding in the integrity of the man of their choice, full of faith in "the creed and standard of their Heaven-sent chief,"

looking only to his support and that of their party, pass the resolve there. The edict is issued there; it enters our hall in the same set phrases from the very extremes of the Union. It is recorded here. The resisting Senators are silenced. Opposition is withered. The vote of condemnation, or other offensive matter, is erased. All obstacles are removed, and the idol of party sits upon "a throne to which the blind belief of millions has raised him." But the constitution of the country lies bleeding beneath the operation, and freedom is driven from her chosen residence—where to find a habitation God only can tell.

Whether this doctrine is to become familiar I know not, Mr. President. In my own State it has not yet become familiar. In her colonial condition it was unknown, even with regard to the members of her Legislature. Since the formation of the Union, it has not been common in relation to the General Government; although several instances of it exist, yet they are not sufficient to establish it as the doctrine of a people who, in the formation of both their Governments, made no provision for its exercise, but *unanimously*, and with unhesitating promptitude, adopted that of the Union, which bound them to their sister States, to elect Senators for a specific period, and bound those Senators to exercise their high functions, "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." Nor has it become the habitual practice in the other States. For the first eight or nine years of the Union, it was not considered sound doctrine, and few, if any, instances exist of its exercise. Even in the celebrated resolutions of Virginia in 1798, it was not made a part of the plan by which that State desired to accomplish her purposes, and rescue the constitution from what she believed its violation. Subsequent and much more recent times have given it vigor, and it has been politically baptized as ancient democracy, under singular auspices, for the establishment of democratic principles; and, under a signal from power, it has been declared "*in keeping with the temper of the times.*" It is indeed fearfully so.

Mr. President, I have thus presented my views of this question of instruction, and might perhaps cease to trespass upon the Senate, but I desired not to be subjected to misrepresentation, unless it be wilful, nor to be condemned for opinions which I do not entertain. I deny the right of the Senate to expunge the resolution of the 28th March last, whether the Legislatures of the States have instructed us to make the erasure or not. I deny the right and expediency of legislative instructions to bind the conscience and judgment of the Senator in matters of constitutional law. I resist *their* right in this mode to compel him to resign, and insist that they have equal right thus to treat any other officer who represents the people or the State. I have said on another occasion\* before the people of New Jersey, and previous to the bestowal of her confidence in electing me to my present office, that this duty of governing the officers of the General Government was not assigned to State officers. "This power does not exist in the Legislature any more than a similar power exists in the representatives of the general will [the Senators, for example,] to control and correct the Legislature of the State in that which has been intrusted to their care. It can only be so if it be thus written in the constitution, the grant of their powers, and *there I do not find it.* The proper course for State officers is, to exercise fully and faithfully the powers given to them, and to resist encroachments upon them, but not to act as guardians, and render void the acts of others, whom their common masters have deputed to perform other services connected with their rights and interests. They may not do this unless the authority has been given to them; and in our State constitution, our warrant to act, no such guardianship is prescribed." And I may now repeat that I can perceive no just principle which will admit instructions from the Legislature to Senators which will not also admit instructions from Senators to members of the Legislature. Both are representatives of the same people, bound to regard their interests, and to discharge their prescribed duties

\* Inaugural Address on 29th October, 1832.



in their different positions; but, as I think, neither authorized to interfere with, by controlling the other. How would an instruction from the Senators of the United States from the State of New Jersey to her Legislature, upon the passage of some law, or upon some political or party question, be received and regarded?

But let not my opinions be perverted. I do not spurn or disregard the expression of opinion—advice—wishes—will—either of the people or Legislature of the State. My respect for them is such as becomes the equal citizen of a free community, who has been favored by their suffrages, enjoyed their confidence, and trusted in many of their official stations. On the same occasion to which I before referred, I also said, that “the PEOPLE OF NEW JERSEY, *by themselves, or THROUGH their representatives here, and to their representatives there, have the right, and are bound by duty to themselves, to convey their commands on this or any other interesting topic; and it is their business both to watch and control the doings of their general agents, and, as they appointed them, so to correct their wanderings and errors.*” The view then taken of the relative powers and duties of the two Governments is not now discarded. And, however the word *commands*, in the foregoing sentence, may admit of cavil, the meaning cannot be misapprehended, although it may be, and has been, misrepresented. The original and controlling power of the people is recognised, as well as their duty to look to the conduct of their agents urged. But the *power of a part of their agents, the members of the Legislature, to assume their places, is denied.* The people may speak, and speak through them, but it must be by a direction and authority expressly given. The people have a deep interest in all the acts of a Senator: a perfect right to watch, guard, advise, correct, his “wanderings and errors;” to communicate their wishes and opinions, so that he may be in no doubt respecting them; and, if he do not comply, to punish him. But *even they* must exercise the power in the mode pointed out in the constitution of the country, which they themselves have made—to which they are parties—and to the support of which they are bound by most solemn agreement, and by every consideration which can have influence on virtue and patriotism. The withdrawal of their confidence, which no good man can disregard, and the refusal to continue him in his station when his term expires, is the constitutional mode of punishment, and it is enough for the protection of their rights. There is no danger that the known wishes of the people or of the Legislature will have too little influence upon the Senator, but rather the reverse. What tie is there, in merely human action, upon the ambitious or the virtuous man, stronger than is afforded in this case? The desire of the approbation of friends; of the kindness and courtesies of life among neighbors; of the support and respect of fellow-citizens; all the hopes of political honor, and fame, and distinction among cotemporaries, call upon him to oblige and obey those who have so eminently trusted him; whose favor and confidence, if they have not made him what he is before the world, have at least enabled him to exhibit, upon a wider circle, his capacities to serve his fellow-men. Can he, will he, lightly regard these bonds? The danger is that he will yield to them too much; that in cultivating their wishes he will forget, in his love for his own narrow portion, the more expanded interests of his whole country. He *will* yield to them, wherever he can yield without the sacrifice of his most solemn convictions of duty. Hence in matters of expediency—on all occasions except where he believes that the constitution will be violated, or the permanent and dearest interests of the people will be affected or destroyed, he will give himself to the wishes of his immediate constituents.

I did so, Mr. President, at the last session, while in the act of disobeying instructions in relation to the public treasury; and if I justly estimate my own feelings and sense of duty, there is no occasion, when either questions of expediency or even of constitutional law may be involved, on which I would not defer much to the deliberate opinions of the Legislature of the State, and always receive, consider, and treat them with the deference to which they are justly entitled; and with an anxious desire to conform my actions to the standard which they prescribe. If they related to matters of expediency and



policy, I could, in most instances, be able to yield my doubts to their judgment. I could rely on their knowledge, especially in local matters, and the peculiar interests of the people of the State; and their wishes would strongly influence me on every subject. The case to which I allude is an example. A provision of law was proposed: I doubted its propriety; and feared lest it should be made to serve the purpose of creating a place for a political partisan who might use its emoluments and advantages for party and electioneering purposes. But it was connected with the convenience of the people of the State, in their transactions under the revenue laws, and I yielded to their wishes and instructions. But when I am instructed to violate the constitution; to erase the Journals; I must pause and disobey. But is this, Mr. President, a denial of the powers and rights and sovereignty of the people? Does not the doctrine I urge maintain these rights and that sovereignty against those who would usurp them? Whose will is to be obeyed? that of the people, or of their agents, the members of the Legislature? And how is the will of the people to be known? In their highest and most solemn act—in their written expressions—in their charter—in the constitution which they have formed for their own government, and made to guide and control their agents. And shall we disregard this *general, almost unanimous will of the whole united people*, at the suggestion and command of a *small portion—of a few*—for temporary or party purposes? It is impossible. When I believe, with sincere and deep conviction, that the Executive has violated *that will—that constitution*—trampled upon the written laws of the land, and assumed powers most dangerous to the liberties of the country, and never granted, nor intended to be granted, to the Chief Magistrate of the Union—shall I, at the command of a small number of my constituents, record my approbation? When, by a like command, I am directed to expunge from our Journal a portion of the legislative history of the country, although the constitution requires me to keep that Journal sacred, must I obey? With my views of these questions, I should be recreant to duty—regardless of the highest and holiest obligations which can rest upon the conscience—a traitor to my country and to liberty, if I permitted myself to obey. I will not. I will dissent from the dangerous doctrines of encroaching power, and record my votes where they cannot and will not be expunged, until our constitution shall have become a dead letter—our institutions be broken down—our liberties held by the tenure of one man's will—and our effort at free government the scorn of mankind. Thus having acted, I shall abide the issue in patience, and, I hope, with somewhat of firmness. I would most cheerfully retire from the painful contest in which I am engaged; but, if I do so, I must acknowledge the principles which I have condemned; and justify, so far as my individual act can have effect, the assumptions to which I have referred. I cannot make this acknowledgment, nor favor this justification. Should the prophecy of the Senator from Missouri be verified—should the waves of popular indignation roll on and overwhelm me and others who take the same views; so be it. I shall not have deserted the constitution of my country, with which its happiness, and liberty, and glory must live or perish forever.

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#### NOTES.

The following statement will show the action of the Senate upon the resolution which induced the foregoing remarks.

On the 18th of February, 1835, Mr. BENTON offered the resolution in these words:

“*Resolved*, That the resolution adopted by the Senate, on the 28th day of March, in the year 1834, in the following words: ‘*Resolved*, That the President, in the late executive proceedings, in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both,’ be, and the same hereby is, ordered to be expunged from the Journals of the Senate; because the said resolution is illegal and unjust, of evil example, indefinite, and vague; expressing a criminal charge without specification; and was irregularly and unconstitutionally adopted by the Senate, in subversion of the rights of defence

"which belong to an accused and impeachable officer; and at a time, and under circumstances, to involve peculiar injury to the political rights and pecuniary interests of the people of the United States."

February 27. The resolution came up, in order, for consideration, and was modified by Mr. B. by striking out the words "peculiar injury," and inserting "serious injury and peculiar danger."

After it was debated by Mr. BENTON and Mr. SOUTHARD, it was laid on the table, on motion of Mr. PRESTON.

March 2.—Mr. PRESTON moved to consider it; yeas 21, nays 22.

March 3.—Mr. CLAYTON moved its consideration, which was agreed to by a vote of 33 to 13.

Mr. WHITE then moved to strike out all after the word "is," in the fifth line, and insert "rescinded, and declared to be null and void."

Mr. McKEAN requested that Mr. WHITE's motion should be modified, by inserting after the word "rescinded," the words "reversed, repealed," so as to make it read "rescinded, reversed, repealed, and declared to be null and void." The object stated by Mr. McKEAN was, to make it conform to a resolution passed by *one branch of the Legislature of Pennsylvania*.

Mr. WHITE accepted the modification.

In this form the resolution did not comply with the instructions of the Legislatures of the several States to their Senators. They did not instruct their Senators to pass a resolution *dissenting from* the one passed by the Senate on the 28th of March, 1834, nor to *alter or rescind it*; but all the instructions directed that it should be "expunged from the Journals." A vote for Mr. WHITE's amendment would not have been in obedience to instructions. Before the vote was taken,

Mr. KING, of Alabama, moved to strike out of the original resolution, as offered and modified by Mr. BENTON, the following words: "*ORDERED to be EXPUNGED from the Journals of the Senate.*" This motion was carried, yeas 39, nays 7, as follows:

YEAS.—Messrs. Bell, Benton, Bibb, Black, Buchanan, Clay, Clayton, Cuthbert, Ewing, Frelinghuysen, Goldsborough, Grundy, Hendricks, Kane, Kent, King, of Alabama, King, of Georgia, Knight, Leigh, Linn, McKean, Mangum, Moore, Morris, Naudain, Prentiss, Preston, Robbins, Robinson, Silsbee, Smith, Southard, Swift, Tipton, Tomlinson, Tyler, Waggaman, Webster, White.—39.

NAYS.—Messrs. Brown, Hill, Porter, Ruggles, Shepley, Tallmadge, Wright.—7.

Thus by a vote of 39 to 7, the Senate resolved that the words "ordered to be expunged from the Journals of the Senate" should be stricken out; in other words, they resolved that the resolution of the 28th of March should not be "expunged."

Mr. PORTER, of Louisiana, who voted in the negative, was opposed to Mr. BENTON's resolution, and against expunging, but he desired those words to remain, and to vote upon the resolution in the form in which it was originally offered.

The State Legislatures which had instructed their Senators to "*expunge*," are believed to be Maine, New Hampshire, New York, New Jersey, North Carolina, Alabama, Georgia, and Mississippi. Ten out of the sixteen Senators from those States voted for striking the words out of the resolution.

A motion was then made to lay the resolution on the table, and carried; 27 to 20, as follows:

YEAS.—Messrs. Bell, Bibb, Black, Calhoun, Clay, Clayton, Ewing, Frelinghuysen, Goldsborough, Kent, Knight, Mangum, Naudain, Poindexter, Porter, Prentiss, Preston, Robbins, Silsbee, Smith, Southard, Swift, Tipton, Tomlinson, Tyler, Waggaman, Webster.—27.

NAYS.—Messrs. Benton, Brown, Buchanan, Cuthbert, Grundy, Hill, Kane, King, of Alabama, King, of Georgia, Leigh, Linn, McKean, Moore, Morris, Robinson, Ruggles, Shepley, Tallmadge, White, Wright.—20.













# SPEECH

OF

*Robert Field*  
MR. STOCKTON, OF NEW JERSEY,

ON

## FLOGGING IN THE NAVY.

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DELIVERED IN THE SENATE OF THE UNITED STATES, JANUARY 7, 1852.

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The memorial in relation to flogging in the Navy being before the Senate, Mr. STOCKTON said :

Mr. PRESIDENT : The subject of this memorial, in my judgment, is equal in importance to any which is likely to occupy the attention of Congress. It was, therefore, sir, that I asked the Senate, on its first presentation, to permit it to lie on the table for a few days, that I might have an opportunity to examine it. At the same time I promised the Senate, when it next came up, that I would express my views in relation to it. It is my purpose now to redeem that promise.

The memorial upon the table presents for the consideration of the Senate nothing less than the whole foundation of our naval structure—the human material by which your ships are worked and fought, your guns leveled, and their thunders pointed at your foes. Good ships, well built, well rigged, and fully equipped, are magnificent and perfect specimens of human science and art. But unless they are manned by good men they will sail only to become prizes to your enemies. If you do not desire to build ships for your enemies, you must give them crews worthy to defend them. Sir, the difference between sailors is as great as the difference between other classes of different nations. There is as much difference between the American sailor in our whaling and coasting service and the sailors of other nations, as there is between the raw European emigrant and the sturdy son of one of our frontier pioneers. The emigrant will, in some cases, almost starve, while the pioneer is building his log house, enclosing his cornfield, and making himself an independent and useful man.

I am of opinion that the nation whose service is supplied with the best common sailors, will excel in naval warfare, as well as in all maritime pursuits. I am further of opinion, that in versatility, education, courage, and industry, our sailors in the whaling and coasting service excel those of all other nations. I am furthermore of opinion, that the superiority of the American sailor has decided the battle in our favor in many a bloody conflict, when, without that superiority, it might have been otherwise. I desire to secure and preserve that superiority. To that end, and for humanity's sake, I am utterly and irreconcilably opposed to the use

of the lash in the Navy, or anywhere else. The longest, the most arduous voyages are made in the merchant service without the use of the lash. In the Polar seas—among the icebergs of the Arctic and Antarctic oceans, the intrepid New Englander pursues his gigantic game and hurls his harpoon; and after a three years' voyage, returns with the oily spoils of his adventurous navigation. But he owes none of his success, his patient endurance, his exemplary discipline, and his indefatigable industry, to the guardian ministrations of the lash. To say that men who can make such voyages, and endure such hardships cheerfully and contentedly, cannot navigate their own national ships without the infliction of the infamous lash, is a libel. Is their nature changed the moment they step on the deck of a national vessel? Are they less men—less Americans—as soon as the custody of the American flag, or the national honor, is entrusted to their keeping? No, sir; it is a libel. I do not mean to use the word in an offensive sense, nor shall I to-day use any word in that sense. It is one of those inconsiderate, thoughtless opinions, which mankind seem to think they have a perfect right to express in regard to sailors. It was not long since, sir, that I had a conversation on this subject with a gentleman who had for several years commanded a fine ship in the merchant service, but who is now an honorable, active, and efficient man of business in one of our large cities, and to whose integrity, generosity, and humanity, I would intrust any body *but a sailor*. After he had heard my views on this subject, he instantly replied, "Why you mean to treat them like human beings." The theory that the Navy cannot be governed, and that our national ships cannot be navigated without the use of the lash, seems to me to be founded in that false idea, that sailors *are not men*—not American citizens—have not the common feelings, sympathies, and honorable impulses of our Anglo-American race.

I do not wonder, when I look back on the past history of the sailor, at the prevalence of this idea. His life has been a life of habitual, I will not say of systematic, degradation. The officers who command him—the oldest, the bravest, and the best—have been accustomed from their boyhood to see the sailor lashed about the ship's deck like a brute. He who by the laws of the service in which he is engaged is treated, or liable to be treated, like a brute, soon comes to be thought of as at least but little better than a brute. Who in social life respects a man whose back has been scarred at the whipping-post? Into what depth of contempt does such punishment sink its victim? And here is one of the worst evils of the system. It destroys those feelings of respect and kindness which officers ought to entertain for the sailors under their command. But this is only one of the worst evils of the system. It destroys those feelings of regard and respect which the sailors should entertain for their officers. The truth is, there are no relations of affection and regard between them. The one is the oppressor, and the other the oppressed. Sir, a man may fear or hate; but he neither loves nor respects his tyrant. The worst government upon earth is that of fear; the best, that of love and affection.

These sentiments, by a law of our nature, must be mutual sentiments. Bonaparte was the idol of the soldier, because the soldier was his idol. They loved him because they supposed he loved them. There is nothing that gallant and brave men will not do and suffer for a commander whom they love. Difficulties and dangers and death have no terrors for such men. In great battles, where the contest has been doubtful, those soldiers have always fought most desperately whose devotion to their commander was the greatest. It has always been considered as an essential element in the character of a successful commander, that he should be able to excite and encourage the confidence and affection of the men under his command. But what confidence or regard can be expected under the government of the lash? But more than this: this punishment destroys the sailor's own self-respect. What has honor—what has pride—what has patriotism to do with a man who may be, at the caprice of another, subjected to an infamous punishment, worse—aye, sir, in some cases worse a thousand times—than death? Can nobleness of sentiment, or an honorable pride of character, dwell with one whose every muscle has been made to quiver under the *lash*? Can he long continue to love his country, whose laws degrade him to the level of a brute? The infamous “question” of torture now only remains as a blot on the page of Anglo-Saxon history. The whipping-post, where the worst vagrants used to expiate their offences, has been discarded from society. The worst offences in our State prisons are no longer punished by the lash. Why is all this? Why are those punishments now condemned as the shameful relics of a barbarous age? It is because the light of a better day has dawned. It is because the precepts of the Gospel of Christianity have ameliorated our laws. It is because society has made the discovery, that if a man is fit to live at all, he ought not to be divested of all the qualities which make a man, by the infamous mutilation of his body. What is the answer which is given to all this by those who seek to restore this relic of barbarism to the Navy? Why, they tell us we intend only to apply this system of punishment to seamen—we intend only to flog sailors. That is quite true. It is only sailors who are to be treated like brutes—aye, sir, worse than brutes. No man who hears me, would permit his dog to be thus treated. There is no spot on the habitable globe known to me, where a man would be permitted to seize up his dog, and lash him until he cut the flesh from his ribs, and the blood should be made to run down from his backbone to his heels. ) But, sir, it is only the sailor, for whom this punishment is to be reserved.

Who, O Senators! is the American sailor, that he is to be treated worse than a dog? He has been my companion for more than a quarter of a century—through calm and storm, privations, sufferings, and danger. In peace and in war I have lived with him, and fought with him side by side by sea and land. I have seen him in the Northern ocean, where there was no night to veil his deeds. I have seen him on the coast of Africa, surrounded by pestilential disease. I have seen him among the



West India Islands in chase of pirates, with his parched tongue hanging almost out of his mouth. I have encamped with him on the California mountains, and on the plains of the Mesa—I have seen the rays of the morning sun play on his carbine and his boarding-pike. I have seen him march one hundred and fifty miles through an enemy's country, over mountains and through rivers, with no shoes on but those of canvas, made by his own hands, and with no *provision* but what he took from the enemy. I have seen his feet scarified by the projecting rocks, as he hauled his cannon over the hills. I have seen him plunge into the Rio San Gabriel, and drag his guns after him in the face of a galling fire from a desperate foe. And finally, I have laid beside him on the cold ground, when the ice has formed on his beard. Sir, his heart has beat close to my own. I ought to know him. I do know him. And this day—now, before the assembled Senate of the Republic, I stand up to speak in his behalf. I hope he will find an abler advocate. Nay, I am sure he will find abler advocates on this floor. But, nevertheless, hear me.

Mr. President, the American sailors, as a class, have loved their country as well, and have done more for her in peace and war, than any other equal number of citizens. Passing by for a moment their antecedent glorious achievements, let me remind you that he has recently gained for his country an empire. Through perils by land and perils by water he has gained a golden empire, which has added to his country's renown and greatness, and perhaps saved his fellow citizens from almost universal bankruptcy and ruin. And what has his country done for him? When the fighting was over, the battles won, the conquest achieved, you sent a band of Mormons to California to drive him to his ship, and rob him of his glory—and historians, too, to prove once more that history is a *lie*. You refused to give him "bounty lands," which you gave to the soldier—his comrade fighting by his side—and you have neglected to give him even your thanks. And now, to cap the climax of his country's ingratitude, these memorialists would have him scourged. They would scourge him for drunkenness, when they put the bottle to his mouth. They would scourge him for inattention to his duty, when injustice and wrong have made him for an instant discontented and sullen. Shame! Shame! You would scourge him while living, and when dead consign him to a felon's grave. That I may not be supposed to have drawn upon my fancy, or to have exaggerated his country's inhumanity, I ask the Secretary of the Senate to read these documents.

The Secretary read them as follows :

*To the Honorable the Senate and House of Representatives in Congress assembled :*

The undersigned, President and Trustees of the Boston Marine Society, of the city of Boston, in the State of Massachusetts, begs leave to represent to your honorable bodies that, having had their attention for many years directed to the condition of seamen, abroad and at home, they have been much impressed with the fact of the sufferings of this valuable class of our citizens by sickness and accidents, and from poverty arising from these circumstances, connected with their proverbial improvidence for the future, with their pecuniary means.

The benefits of medical aid and comfort in foreign ports enjoyed by others, are hardly

ever obtained by them, and, in consequence, after receiving such comforts and attentions as the ships they are attached to and their officers can give, they are frequently brought home and placed in our marine hospitals, where no seaman can remain beyond the time limited by the laws regulating those institutions.

It is very often the case that they are dismissed from these hospitals when not sufficiently restored to render them fit for their active service, and, in consequence, they become paupers or tenants of public alms-houses, though most of them would rather die than suffer this degradation.

It is well known to all observant of seamen, that they are always ready to answer the call for their services, whether it be in the service of the naval or of the mercantile marine—as ready to fight with valor for their country as to aid in its commerce—and so true is this, that very few seamen advanced in years can be found who have not served in both our public and private ships.

Your attention is respectfully called to the fact, that there is at this moment in the public treasury, as your memorialists have been informed, money to the credit of seamen who have been attached to the government marine and to the mercantile marine, amounting to more than a million of dollars.

This large amount has accrued from unclaimed sums due to deceased seamen, from unclaimed prize money belonging to seamen of private as well as public armed vessels, and to the contributions made by all seamen of twenty cents per month in the name of hospital money.

In view of these facts, your memorialists beg leave to solicit from your honorable bodies that measures may be taken to ascertain the amount accumulated from these sources in the United States Treasury, and that therefrom suitable provision may be made in the principal seaports in the United States for the further maintenance of seamen, citizens of the United States, who are infirm and unfit for service, from sickness, advanced age, or any other cause. All which is respectfully submitted.

PRESIDENT AND TRUSTEES, B. M. S.

Z. RING, Esq.—DEAR SIR: I herewith furnish you with the information desired. During the year 1850 there were 106 deaths of seamen; of which number 45 were buried by friends, the balance (61) were taken by the Alms-house to Potter's field; for the latter class the Government allow us \$5 each—(\$3 for coffin, and \$2 for ground.)

Not one in ten have money to provide for themselves.

Very respectfully,

JOHN L. ROOME,

*Superintendent of City Hospital, N. Y.*

POTTER'S FIELD.—The grand jury for the September term examined 276 complaints, and found 133 bills of indictment. They visited the various public institutions, but made no presentment. Previous to being discharged by the court, the foreman, Henry Erben, Esq., at the request of the grand inquest, stated to the court that the jury had visited Potter's Field, and found it in a horrible condition. One pit was about half filled. The coffins were exposed to the sun. The stench from them was very great. They directed Mr. Webb, the keeper, to come before the grand jury on the following day. On the 19th he made the following affidavit:

GRAND JURY ROOM, *September 19, 1851.*

William O. Webb, being duly sworn, saith, that he is the keeper of Potter's Field; that the ground on Randall's island, used for a burying place, is not at all suited for it; that it is full of rocks; pits are dug for the dead, where they are put in layers of six deep. The bottom of the pits being solid rock, when decomposition takes place, the liquid not being able to go in the ground, passes through the top, causing a horrible stench, which can be smelt for more than a mile.

There is no earth between the layers of coffins, and there are only about eighteen inches of earth over the top layer of coffins—that it frequently happens that at high tides and heavy rains, the water gets into the pits, so that the coffins are floating. He further saith that in less than three weeks there will be no room left in the yard to bury another person. He also states that the south end of Ward's Island is a suitable place for a Potter's Field, the soil being good and free from Rock.

Sworn this 19th day of September, 1851.

HENRY ERBEN, *Foreman.*

MR. STOCKTON. Mr. President, to whom in time of peace are entrusted the lives of the thousands who traverse the ocean? Whose energy and skill, and hardy self-denying toil, carry the products of your soil through the world, and brings back the rich return? It is the American sailor. By his superior qualities as a man he has enabled you to rival in commerce the boasted mistress of the ocean. Where is the coast or harbor in the wide

world accessible to human enterprise to which he has not carried your flag? His berth is no sinecure. His service is no easy service. He is necessarily an isolated being; he knows no comforts of home, and wife, and children. He reaps no golden rewards for the increase of treasure which he brings to you. When on shore he is among strangers and friendless. When worn out he is scarcely provided for. Making many rich, he lives and dies poor; carrying the arts of civilization and the blessings of the Gospel through the world, he is treated as an outcast from the mercies of both. But look to your history—that part of it which the world knows by heart—and you will find on its brightest page the glorious achievements of the American sailor. Whatever his country has done to disgrace him and break his spirit, he has never disgraced her; he has always been ready to serve her; he always has served her faithfully and effectually. He has often been weighed in the balance, and never found wanting. The only fault ever found with him is, that he sometimes fights ahead of his orders. The world has no match for him, man for man; and he asks no odds, and he cares for no odds, when the cause of humanity or the glory of his country calls him to fight. Who, in the darkest days of our Revolution, carried your flag into the very chops of the British Channel, bearded the lion in his den, and woke the echoes of old Albion's hills by the thunders of his cannon and the shouts of triumph? It was the American sailor. And the names of John Paul Jones and the *Bon Homme Richard* will go down the annals of time forever. Who struck the first blow that humbled the Barbary flag, which for a hundred years had been the terror of christendom, drove it from the Mediterranean, and put an end to the infamous tribute it had been accustomed to extort? It was the American sailor. And the name of Decatur and his gallant companions will be as lasting as monumental brass.

In your war of 1812, when your arms on shore were covered by disaster—when Winchester had been defeated—when the Army of the Northwest had surrendered, and when the gloom of despondency hung like a cloud over the land, who first relit the fires of national glory and made the welkin ring with the shouts of victory? It was the American sailor. And the names of Hull and the Constitution will be remembered as long as we have left anything worth remembering. That was no small event. The wand of Mexican prowess was broken on the *Rio Grande*. The wand of British invincibility was broken when the flag of the *Guerriere* came down. That one event was worth more to the Republic than all the money which has ever been expended for the Navy. Since that day the Navy has had no stain upon its escutcheon, but has been cherished as your pride and glory. And the American sailor has established a reputation throughout the world—in peace and in war, in storm and in battle—for unsurpassed heroism and prowess.

Mr. President, I am no painter. I cannot draw with artistical skill the scene I would have you look upon. But it requires no



artist. Picture it to yourself, sir. See the gallant bold sailor who has served his apprenticeship with Hull in the Constitution, or one who helped to drag the guns across the San Gabriel, stripped and lashed worse than a dog. Can you stand it, sir? Yet your laws have authorized it to be done—it probably has been done. And now it is proposed to give authority to do it again. Will the American people stand it? Will this more than Roman Senate long debate whether an American citizen, as he is—the sailor shall be entitled to all his rights as an American citizen or not; whether, freeman as he is, he shall be scourged like a slave? Cicero's climacteric, in his speech against Verres, is, that though a Roman citizen, his client had been scourged. And shall an American citizen be scourged? Forbid it, God of humanity, forbid it. For my own part, I would rather see the Navy abolished, and the stars and stripes buried with their glory in the depths of the ocean, than that those who won its glories should be subjected to a punishment so ignominious and brutalizing. Sir, if I had the power vouchsafed to others, to impress my own feelings upon the hearts of those who hear me, I would rouse in the minds of Senators such a sense of national pride and human sympathy that they would with one voice demand that the memorial which seeks to rob the American sailor of his rights as an American freeman, should be thrown under your table and trampled beneath your feet.

Mr. President, the object of all our legislation for our seamen should be to elevate them as a class, and not to degrade them. In proportion as you do this, and teach the sailor to respect himself, you will bring him to the performance of his duty with cheerfulness and alacrity. You best appeal to his patriotism by showing him that he is honored and respected by his country. You best appeal to his sentiment of native pride by presenting motives to his emulation. You can do infinitely more with him by rewarding him for his faithfulness than by flogging him for his delinquencies. Whatever the peculiarities of the sailor may be, he is still a man, with all the impulses, wishes, and hopes of a man. And if there is one trait more peculiar to him than another, it is the sentiment of gratitude. He never forgets a kindness, and would take his heart out of his bosom, if he could, to save a friend. Let him only see that he is honored and respected by his country, and her honor and interest will always be safe in his hands.

I believe that many of the officers of the Navy have fallen into the error of supposing that sailors are more influenced by their fears than by their affections. They do not rightly appreciate his character. If they would take more pains to think for him—to keep him out of temptation—to attend to his wants—to see that he was fairly and justly dealt by—and properly to consider the fair allowance which ought to be made for him, they would find it much less difficult to enforce discipline, to gain his confidence, and find him much more tractable. It is not by the severity of discipline as much as it is by a firm, just, and generous government, that he is to be controlled. It is so among men everywhere. It is rather by humane and judicious laws, than by the severity of

penal enactments, that good government is established and maintained. Again: in the training and governing those men who are to fight your battles, and face every danger with courage, their fear should seldom be appealed to. You ought not to cultivate the emotions which make men cowards, and teach them habitually to shrink from the fear of personal suffering. You ought rather to teach them to despise all honorable suffering. True heroism is an intellectual quality. It is moral intrepidity that makes the man of true and reliable courage. And this can only co-exist with a proper sense of personal honor and self-respect. Degrade a man by an infamous punishment, which destroys his personal honor and self-respect, and you do all that human ingenuity can to make him cowardly.

But it is said that the Navy cannot be governed without the lash. As a general proposition, I express my utter dissent to it. I admit that among sailors, as among other classes, there will always be found some who are vicious and troublesome. That is the case in the Army as well as in the Navy; and they have abolished the lash in the Army. It is as easy to get other and less offensive punishments for the Navy as for the Army; and if those punishments will not answer, the refractory person had better be driven in disgrace from the Navy. He is not fit to be trusted in the hour of peril—he is unworthy to have the honor of the flag confided to him. Sufficient inducements should be offered to the better classes to enter the Navy; and a part of those inducements should always be good treatment. A free use of the lash—nay, its probable use, its permission by law—has always been an objection urged by the better classes to entering the Navy. They prefer the merchant service, where they can at least select their own commander, while in the Navy they know not into whose hands they may fall. Thus you see that the very necessity which is pleaded creates, in a great degree, the circumstances out of which it is supposed to spring. You flog because there are bad men in the Navy, and the fact that you do flog excludes the better class of sailors from entering the service; so that the mischief is self-perpetuating. But again, it is said that a large majority of the officers of the Navy are of opinion that the lash is necessary and indispensable.

Well, there are differences of opinion about it. We all know, however, that old notions and opinions are hard to be rooted out, and that men are very apt to love arbitrary power when they are to exercise it, and not be subject to it. All history shows this, and the experience of all reformers confirms it. Lord Denman, late Chief Justice of England, in a letter on the subject of legal reform, complains that everywhere he met the objection that the judges were opposed to it. And Lord Brougham, in a speech delivered in Parliament on the same subject, expresses a similar sentiment; yet it was not long before the judges and the bar and the people concurred in opinion as to the beneficial effects of the same reforms. It would seem, sir, that it is a part of man's nature to yield with great reluctance the smallest atom of power

with which he may be invested. He is unwilling to admit that he can abuse it. Its safest depository he considers is his own hands. For these and similar reasons, I think that the opinion of the officers of the Navy on this subject should be taken with many grains of allowance. I find no fault with the independent expression of their opinions. It is the opinion itself which I propose to combat. Their argument is as brief as it seems to some minds formidable. They declare the lash to be necessary and indispensable. If they are right in this opinion, there is an end to the matter. Necessity has no law. But I beg leave to inquire into this alleged necessity.

And first, I ask for what offences has this lash been so freely used? Has it been inflicted for serious or atrocious crimes, which involve the honor of our flag or the safety of our national vessels? Or rather, let me ask, has it not been inflicted for offences which, if they had been entirely overlooked, would not have injured the proper discipline of the Navy? Has the lash ever been used in the hour of battle, or in that of preparation for a battle? Is it reasonable to suppose that a coward or traitor would face a cannon-ball to avoid the lash? It would seem, then, without multiplying words, that so far from the lash being necessary for the maintenance of discipline in the most important duty of a ship-of-war, it never has been and never will be used. How is it, then, in regard to the most important matter concerning the discipline of a man-of-war? Has it ever been used for the suppression of mutiny? No, sir; the law has provided for that offence, as well as for cowardice, the punishment of death. Having thus briefly stated what the lash has not been used for, let me inquire, what are the offences for which it is deemed so absolutely necessary? We may derive some information in this particular from the published reports of the offences and punishments which have actually occurred on board our ships-of-war. By reference to the report of the Secretary of the Navy on this subject, you will perceive that one of the offences for which it has been used is that of suspicion of theft. One would hardly say it was either necessary or proper in that case. The offence for which, however, there seems to have been more lashes inflicted than for all other offences, is that of drunkenness. Now, sir, the Government furnishes the liquor for the sailor, and if he gets drunk upon his allowance, the Government itself is responsible, and the sailor ought not to be flogged. If he procures it on board of a ship by theft or bargain, it is evidence of a laxity of discipline, for which others are responsible, and for which the sailor ought not to be flogged. The lash, therefore, is not necessary to prevent drunkenness, not only for the reasons just stated, but because it must be universally admitted that it never has and never can prevent the offence of drunkenness, if he who is habituated to it is permitted to have liquor.

The offence of disobedience of orders will be found frequently in this report. But we are not informed of the precise nature of the offence. Whether it is actual or constructive disobedience of



orders; whether it is a serious or trifling matter; whether it is for accidentally spitting on the deck, or neglecting to clean the bright works of a ship, or not mending his clothes, or leaving his bag on deck; or whether it was a positive refusal to do his duty. We are, therefore, left to infer its seriousness by the punishment inflicted for it. I will hazard the opinion, judging by that standard, that stopping the offender's allowance of tobacco, or rum, tea, sugar, and coffee, would have been, in every case, a much more reasonable and a more efficient punishment. And now, sir, what has become of this plea of necessity?—I will not call it in this connexion the tyrant's plea; the officers of the Navy do not deserve such a reproach from any one, and especially from myself, because I did when in the service execute, and permit to be executed, the law of the lash as I hope I did all other laws of the service, which I had sworn to obey and to enforce. And this should be a sufficient answer to those who expect to escape from the grasp of argument and facts by indulging in individual recrimination, and will be sufficient to remind them that there is some difference in the position of those who are called upon to make the laws and those whose duty it is to execute them.

The officers of the Navy, in my judgment, are entitled to high commendation. They are, as a class, brave, noble, generous, and patriotic men; and in all the elements of character which constitute valuable public servants, they have no superiors. But however much respect I may entertain for them as a class, it is my duty, which I shall endeavor to perform, to deal without reserve or false delicacy with their arguments, and the errors which disgrace and paralyze the service to which they belong. It does appear to me, Mr. President, that the argument, from necessity, has resolved itself simply into this: that the lash is an easy and short way to settle a trifling difficulty with a sailor. And so were the thumb-screw and the rack an easy and short way to get a confession, and the inquisition settled matters of faith easily and readily. But, sir, there has been a great change in the opinions of mankind on this subject, and I hope the change will go on until the last relic of barbarism shall be banished from the world.

But I care very little for the details of this argument, and will not detain the Senate any longer in relation to them. There is one broad proposition upon which I stand. It is this: That an American sailor is an American citizen, and that no American citizen shall, with my consent, be subjected to this infamous punishment. Placing myself upon this proposition, I am prepared for any consequences. I love the Navy. When I speak of the Navy, I mean the sailor as well as the officer. They are all my fellow-citizens, and yours; and come what may, my voice will ever be raised against a punishment which degrades my countrymen to the level of a brute, and destroys all that is worth living for—personal honor and self-respect.

Mr. President, reference has been made by these memorialists to the example of the British Government. With what propriety such an appeal is made by the citizens of a free republican Gov-

ernment to the institutions of monarchy, let others determine. But, sir, I am not aware that the British Parliament has ever by statute expressly authorized the use of the lash. There is no doubt that it is used in the Navy of Great Britain, and has been so used since the restoration of the monarchy under the Stuarts; but there is no evidence that the practice of flogging prevailed in the republican fleets of the English Commonwealth; and it is doubted by the best authorities that it ever was tolerated prior to the act of 13th Charles II. We have copied it from their practice, and not from their statute-book. But our Congress did what no British Parliament ever did: they sanctioned it in express terms by the laws of the United States. And here, Mr. President, you must permit me to call the attention of the Senate to a most singular fact, which is this: Our law of April, 1800, was principally copied from the statute of Charles II., and is openly and avowedly more severe and arbitrary than the British act, even under the Stuarts, and has remained so until last year, although flogging, as a punishment, was tolerated during the whole of that time, and up to the present moment, on land in England.

The act of Charles II. alluded to, was passed when the Duke of York, afterwards James II., was Lord High Admiral of England, and may be supposed to have been done at his instance. The English historian, the Earl of Clarendon, tells us, that when that prince entered on his duties, he found the Navy too republican for his taste or purposes, and set about reorganizing it by getting rid of the republican officers. In pursuance of this policy, he procured the passage of the act of 13th Charles II. Although that act does not, in express terms, authorize the use of the lash, yet by virtue of a clause contained in it, the Lord High Admiral, or the commissioners for executing his duties, issued instructions authorizing the use of the lash in the British Navy; and certainly it may be cited to justify any tyranny. I would not have noticed the reference of the memorialists to the practice in the British Navy, but that I desire, on this subject, not to leave a peg to hang a doubt upon. But, sir, the example of the British Government, such as it is, is no justification for the United States. The infliction of corporal punishment for certain offences has always, as far as I know, been sanctioned by British laws. The sailor in the British Navy receives the same punishment that is inflicted upon landmen in England; whereas, in the United States it has been almost universally abolished, and certainly has never been sanctioned by the laws of the United States, except in the Army and Navy. Justification it has none; and if palliation is to be looked for, it could only be found in its infliction by the judgment of the sailor's peers. But the trial by jury is unknown to the naval service. Those great conservative safeguards, so dear to freemen—the arraignment and trial before a jury of his peers indifferently selected, counsel and defence, are unknown to the everyday discipline of a man-of-war. Much less has the sailor any appeal. The process by which he is tried is a short process, and the punishment follows immediately on judgment. Where the power to punish is

so absolute, the law should at least protect its victim from an infamous punishment for a petty offence, which may disgrace and ruin him for life. If when a citizen enters into the service of his country, he is to forego the protection of those laws, for the preservation of which he is willing to risk his life, he is entitled in all justice, humanity, and gratitude, to all the protection that can be extended to him in his peculiar circumstances. He ought certainly to be protected from the infliction of a punishment which stands condemned by the almost universal sentiment of his fellow-citizens; a punishment which is proscribed in the best prison-government; proscribed in the school-house, and proscribed in the best government on earth—that of parental domestic affection. Yes, sir, expelled from the social circle, from the school-house, the prison-house, and the Army, it finds defenders and champions nowhere but in the Navy. To say that no laws can be devised for the government of the Navy which do not tolerate the lash, is an acknowledgement of imbecility which this Senate will never make.

The difficulty in regard to this matter has been, that in framing articles for the government of the Navy, three things have been overlooked, which ought never to be lost sight of. First, that an American sailor is an American citizen and a freeman, though in the service of his country. Second, that he has yielded no legal right, not inconsistent with his obligations of duty. Third, that naval officers are not infallible, and require as stringent regulations for their government as other citizens invested with authority.

And now, Mr. President, I come to the discussion of a part of this subject far from being agreeable. Why is it that naval officers, and even some seamen, as I am told, desire to have the lash restored to the Navy? It is a symptom of unfavorable augury. It is an indication that the moral standard by which the Navy is estimated, is low and degraded. It argues a preference for the exercise of arbitrary power, rather than appeal to those feelings of respect and sentiments of honor, which should influence the conduct of honorable men towards each other in the service of their country.

The great Montesquieu has said, that while virtue was the principle of a republic, honor was that of a monarchy. Now the actual government, in peace or war, in your military and naval service, is necessarily, in some degree, monarchical. Within the limits of his command, and in reference to those immediately subject to him, the captain, the colonel, the general, or the commander of a ship of war, is a sovereign—a monarch; and I hold that honor is the principle on which the government of his subordinates should be founded. Tell me not that a sailor's heart is insensible to the dictates of honor. I know better. It is there. It may indeed slumber and remain passive, and be almost extinguished by sullen revenge or bitter hatred; yet there it is, as real, and in as perfect existence, as in your breast or mine. By proper appeals to it, by generous treatment, by manly and discriminating excitement, it kindles into activity, and becomes the supreme arbiter of the sailor's life and conduct. Sir, if the officers would only believe



in the existence of this sentiment of honor, and appeal to it as an instrument for the preservation of discipline, we should not be asked to restore the lash. A requisition for the lash proceeds on the supposition that there is no honor in a common sailor. Now, so far from that dogma having any foundation in fact, it must be known to all who appreciate the character of a true-hearted sailor, that honor is almost the only principle by which nine-tenths of them are governed. When an unsuccessful appeal is made to the honor of a sailor, it is not because he is destitute of the principle, but because the appeal has not been properly made.

In the view I take of the subject, then, the argument derived from a low and degraded estimate of the Navy, is unfounded in any of the characteristics belonging to the common sailor. Has it any foundation in the incapacity of the officers to excite and cultivate those feelings of honor in a sailor which make him obedient and tractable? I hope not. If there be any such, they should not be intrusted with any command. *They* are destitute of the faculty of commanding. *They* have not the necessary qualification. *They* are not safe depositaries for such absolute power, or for the security of our public ships. How can *they* rouse the sailor's sense of honor in time of battle, who have proved themselves incapable of believing in its existence at all other times. I apprehend, if the restoration of the lash be made to hinge upon the question, whether the sailor is destitute of honor, or the officers of capacity to successfully appeal to that honor, that we should not be troubled with many importunate demands for its restoration. If the desire to restore the lash to the Navy is evidence that the standard by which the Navy is judged is low and degraded, it is also evidence, to my mind, that the Navy has not kept pace with the moral improvement of the age. If it be the general opinion in the Navy that the lash is necessary and indispensable for the preservation of discipline, then, I say, we are now just where public sentiment stood in 1660, during the infamous reign of Charles II. Then the thumb-screw and the rack were in vogue, too. And if we are to go back to the lash, I do not see why we should not retrograde likewise to the boot, the rack, and the torture. What would be thought of the man who would propose to introduce into our penal code those horrible and barbarous punishments of which I have spoken? What would be thought of the civilized community who would approve such a proposition, and re-enact punishments in vogue three hundred years ago? Yet the proposition to restore the lash is of a similar character. It takes for granted that the sailor has remained stationary, ever since the rack, the thumb-screw, and the boot were abolished as part of the criminal law of civilized nations; it takes for granted that of all the light which has irradiated the human mind during the progress of the world, none of it has been poured on the understanding of the sailor. That he alone has remained stationary. That he alone has remained ignorant and incapable of improvement. That he alone is doomed to remain the victim of injustice and cruelty. Look, sir, through the various pursuits of

human life, and wherever your eyes rest, you find that improvement has advanced with giant strides. You find that it has elevated and enlightened the ploughman in his field—the mechanic in his workshop—the merchant—the professional man—the daily laborer—all have felt the benign influences of improved civilization. If the sailor has not felt it in an equal degree with other classes, it is because you have degraded and abused him, by treatment from which other classes have compelled you to relieve them. His voice has not been heard like that of other classes in the halls of legislation. He has no representative in such places. He wields no political influence. He has no residence. His domicile is on the ship. If the interests of the sailor had received a tithe of the attention bestowed by legislators on the interests of other classes, we should not now be discussing the question whether or not he should be remanded to the tender mercies of these penal atrocities, from which the progress of modern improvement has relieved all other denominations of men—we would not now be discussing the question whether he should be treated like a man or a brute.

Mr. President, a word or two more and I am done. We hear a great deal of the delinquencies of sailors. There are delinquencies of officers, as well as of sailors. There are officers in the Navy, as well as sailors, who ought not to be there. If you desire to prepare the Navy for the exigencies of war—if you desire to preserve your ancient renown as a naval Power, you must, in my judgment, abolish the lash, and adopt a system of rewards and punishments in its stead. You must abolish the liquor ration; you must alter the whole system of the recruiting service; in one word, you must purge the Navy of all its foul stuff, in high places as well as low places; and you must lay broad and deep the foundation of your naval greatness in the character of the COMMON SAILOR. The bone and sinew of every Navy is the common sailor. You require the commanding intellect of scientific officers to direct him, and you require good ships. But after all, the common sailor is the working power which enables the captain and the ship to gain laurels. 'Tis the sailor who works and sails and fights the ship; and in proportion as he is superior or inferior, will be the success of the captain and the ship. Sir, in all the best traits of character which distinguish sailors, no nation excels the United States. The American sailor is bold, intelligent, hardy, and enterprising, and in nautical skill is unsurpassed. He shrinks from no danger, he dreads no foe, and yields to no superior. No shoals are too dangerous, no seas too boisterous, no climate too rigorous for him. The burning sun of the tropics cannot make him effeminate, nor can the eternal winter of the polar seas paralyze his energies. Foster, cherish, develop these characteristics by a generous and paternal government. Excite his emulation, and stimulate his ambition by rewards. But above all, save him, save him from the brutalizing lash, and inspire him with love and confidence for your service; and then there is no achievement so arduous, no conflict so desperate, in

which his actions will not shed glory upon his country. And when the final struggle comes, as soon it will come, for the empire of the seas, you may rest with entire confidence that victory will be yours.

I move you, sir, that it is inexpedient to grant the prayer of the petitioners.

Mr. BADGER having replied—Mr. STOCKTON made the following rejoinder :

Mr. PRESIDENT, I have been accustomed heretofore to look to the Senator from North Carolina, (Mr. BADGER) for direction and counsel in important matters. I have always had great pleasure in considering him not only my friend, but worthy of the most entire confidence and respect; but however much I may regard him individually—however much I may esteem his great learning and acquirements, I must say to the Senate, even at the risk of being thought quite presumptuous, that I do not think that the Senator from North Carolina has treated my remarks with his usual candor and fairness. He has stated my arguments in his own way, and then unceremoniously declares, that I have myself refuted them. His speech seems to have been characterized by a degree of levity not altogether in good taste. It appears to me that under the circumstances, I had a right to expect something more kind and considerate from the honorable Senator. Certainly the attempt to turn my argument into ridicule was the last thing I should have expected from him.

Mr. BADGER. I beg pardon of the Senator. I intended no such thing.

Mr. STOCKTON. I thought the gentleman intended to do so. The gentleman at any rate took advantage of the opportunity to display to the Senate, at the expense of my argument, the versatility of his genius, and his classical erudition. As far as it was agreeable to him, I am glad that he had the opportunity to do so. But, sir, there is nothing, in my judgment, which the Senator said worthy of a reply from me, except one remark. In referring to my remark, that when the sailor was flogged he was scourged like a slave, the honorable Senator intimated that I was claiming more for the sailor than he was justly entitled to. Sir, all that I ask for the American sailor is, that he shall be treated like an American citizen. I have asked for nothing more. Now, I would inquire of the Senator if American citizens are scourged.

Mr. BADGER. Certainly they are.

Mr. STOCKTON. That may be the case in North Carolina. It is said they are somewhat behind the age there; as their criminal code has remained stationary, so has North Carolina remained stationary. (Laughter.)

Mr. BADGER. And in Virginia and Delaware. Most respectable company for North Carolina.

Mr. STOCKTON. I shall say nothing about Delaware, and I have no knowledge of flogging being allowed in Virginia. But I say, that the American citizen in the other States of the Union,



is elevated high above the scourge. All I ask is, that the American sailor should be treated like any other American freeman, and not punished like a slave. The slave is, perhaps, as universally punished by the lash, when he deserves it, as the American freeman is exempt from such a punishment. Therefore it was that I said that an American freeman as he was, the American sailor ought not to be scourged like a slave. Now, I would ask the honorable Senator whether he would have the punishment of the lash inflicted upon the freemen of the United States generally? If the honorable Senator is prepared to say that he is willing to have this punishment inflicted on all the citizens of the United States, there may be some consistency in his position.

MR. BADGER. Does the gentleman wish me to answer that question?

MR. STOCKTON. Certainly, if you see fit.

MR. BADGER. Then I would say that I am totally opposed to any law for whipping all of the citizens of the United States, for we should be brought into the difficulty of being citizens of the United States. With regard to the subject of punishing offences, I am very well satisfied that the system of punishment prescribed by the laws of the United States, prevails over the citizens of the United States; and I am very well satisfied that the system prescribed by law, prevails over those citizens of the United States who are sailors. I would ask the Senator, if he intends that the sailors shall have all the privileges of citizens of the United States? Does he intend that bills shall be found against them by grand-juries, and that they be brought to trial before judge and jury?

MR. STOCKTON. I should be very glad if sailors could have the benefit of a trial by jury. The Senator says wisely, that he does not want all the citizens of the United States scourged. No, sir! The honorable Senators are not going to take it themselves—

MR. BADGER, (in his seat.) Present company always excepted.

MR. STOCKTON. It is determined that the executive head of the government shall not get it—that the members of Congress shall not get it. Now, sir, please tell me why the Senator should not be flogged as well as the sailor. Or why any other public servant, as well as the sailor, should not be scourged. Especially let him tell us, why the defrauders of the Government—those men who rob the public treasury—should not be scourged as well as the sailor.

The honorable Senator knew, when he began this argument, that he had no good cause, but he has worked all round the circle, and at last got back to the very same place from which he started. He now says, that he is not willing to restore the lash at present; therefore, Mr. President, I move that it is inexpedient to grant the prayer of the petitioners.







17  
SPEECH

OF

*Robert F. Stockton*  
HON. R. F. STOCKTON,  
OF NEW JERSEY,

ON

HARBOR DEFENSES.

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DELIVERED IN THE SENATE OF THE UNITED STATES, MAY 11, 1852.

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WASHINGTON:  
PRINTED BY JNO. T. TOWERS.  
1852.



## S P E E C H .

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The Senate having resumed, as in Committee of the Whole, the consideration of the joint resolution authorizing the completion of a war steamer for harbor defense—

Mr. STOCKTON said: Mr. PRESIDENT, when the chairman of the Naval Committee announced to the Senate his intention to call up the resolution now under consideration, he stated that the Senator from New Jersey—myself—felt great interest in the subject. It is quite true; I do feel great, very great interest, in the success of this resolution, and I have no doubt that the result will show that I am not the only Senator who feels deeply interested in the prosperity and safety of New York city. I am interested, principally, because I am of opinion that the defenses of that city require the immediate attention of Congress, and partly because one of my constituents—a gentleman of reputation, and usefulness—has been, in my opinion, unfairly, ungenerously, unjustly treated by the Government. I do not mean by the present Secretary of the Navy, because I understand that this whole matter was, by his remarkable predecessor, placed beyond his control.

There was a report made by the Naval Committee, at the time this resolution was first presented to the Senate. I ask that it may now be read. It will probably relieve me from the disagreeable duty of saying anything further as to the conduct of the late Administration:

The Committee on Naval Affairs, to whom was referred so much of the President's message and accompanying documents as relates to naval affairs, having had under consideration that part of the report of the Secretary of the Navy which refers to the construction of a war-steamer by Robert L. Stevens, report:

That on January 13, 1842, the Board of Commissioners of the Navy recommended Mr. Stevens's plan for a steamer, to be ball and bomb proof, to the consideration of the Secretary of the Navy. Shortly afterwards Mr. Stevens submitted to Congress a printed copy of his plan. The Chamber of Commerce of New York, on the 15th of February, 1842, recommended to Congress the plan of Mr. Stevens.

A joint board of officers of the Army and Navy, to wit: Colonels Totten, Thayer, Talcott, and Captain Huger, Commodores Stewart and Perry, Captain Stringham, and Lieutenant Newman, appointed for that purpose, convened in New York the 8th of July, 1841, to witness, superintend, and report upon Mr. Stevens's experiments with a bomb and ball proof target, suited to the sides of a vessel. The experiments were made in their presence, and a report of the board submitted to the department in favor of Mr. Stevens's proposed plan of construction.

On the 14th of April, 1842, Congress passed an act authorizing the Secretary of the Navy to contract with Mr. Stevens for a war-steamer, shot and shell proof, to be constructed principally of iron, upon the plan of Mr. Stevens, not to cost more than the average of the steamers Missouri and Mississippi, and appropriated \$250,000 for the purpose.



On the 10th of February, 1843, Mr. Stevens entered into contract with Mr. Upsher, Secretary of the Navy, to build a war-steamer, "to be shot and shell proof against the artillery now in use on board vessels-of-war."

In order to launch a vessel of the size and description of the one contracted for, Mr. Stevens found it necessary to excavate, and erect at his own, and an enormous expense, a dry-dock of capacity sufficient to build her in and float her out. This, of course, involved the necessity of delay in construction; though while engaged in making the dry-dock, he was also assiduously engaged in procuring the materials, fashioning the patterns, and organizing the preliminary details for an undertaking of such magnitude and importance.

In December, 1843, Mr. Henshaw, who succeeded Mr. Upsher as Secretary of the Navy, declined making the necessary payments for materials. In November following, a second contract, very full, minute, and particular, was made with Mr. Stevens, which was followed by a supplemental contract with John Y. Mason, Secretary, in December, 1844, and which provided for the payments on account of the contract. Mr. Stevens then prosecuted with vigor the performance of his duties; and while so engaged, on the 9th of December, 1845, was again arrested in the execution of his contract, by an order from Mr. Bancroft, stopping all further proceedings under the contract, and refusing further payments until the plan for the steamer was furnished. Yet, at this very time, the department was in possession of the plan of Mr. Stevens, furnished when the original contract was first made, and a further statement of his plan furnished in November, 1844. Thus a second time was he stopped in his work. His health being seriously impaired, he was ordered to Europe by his physician.

In January, 1847, Mr. Stevens applied to Mr. Mason, then Secretary, for an extension of time in which to complete the steamer, and satisfactorily accounted for the causes of whatever delay had been suffered. After more than eighteen months, an additional contract was made, reciting the former, and extending the time of completion to four years from the date of the last. By these several contracts, the most minute details of the work were given, and the complete security for the execution of the project, and every proper safeguard, was provided against loss by the United States.

Hardly a year, however, was permitted to elapse, when, in August, 1849, Mr. Secretary Preston refused to make any further payments to Mr. Stevens on account, and the work was again stopped. Mr. Stevens was then in Europe, engaged in obtaining better materials for some portions of the steamer than could be obtained in this country. Contracts were made by him in Europe for such materials. After which he immediately returned home, and urged the Secretary to permit him to proceed according to contract. Mr. Preston, however, declined taking any other step than to refer the matter to Congress.

Whatever delay took place in the performance of this contract, was indispensable to its faithful and successful execution. The necessity for these delays was not, it is believed, properly appreciated by the Navy Department. The experiments necessary to test the quality of the materials, and demonstrate the details of the plan, involved the consumption of much time. The experiments necessary to establish and improve the character of the propeller which was finally adopted, also required much time. Even from this delay the Government derived the advantage of availing itself of this propeller, in the construction of the Princeton, which was thus proved to be superior to any other then in use, or indeed since adopted. Workshops, together with a steamboat, were required to be built for those experiments. Also a large dry-dock was constructed, with a steam-engine, punching and drilling machines, tools, &c., and large pumps, which have kept the dock free from water ever since its completion, at very great expense. One third of the dry-dock within which the Government iron steamer was to have been built, was excavated from solid rock. All this consumed and required unremitting personal exertion and supervision, and large expenditures of money, for which no remuneration has been made. But all delay was satisfactorily explained before the several renewals of the contract, at each period of such renewal.

When the contractor was first arrested, by Mr. Secretary Bancroft, he was in advance, and liable for materials—principally for heavy plates of iron from Pennsylvania, about \$40,000, which was subsequently paid to him. He is now in advance about \$30,000, also for heavy plates and tubes for the boiler, &c., from England. Yet the Government now proposes to sell his property to reimburse itself for previous payments on his contract, for non-performance of the same, performance of which has been prevented by the action of the Government itself.

On the 21st January, 1851, Commodore Skinner addressed Mr. Stevens, and informed him that the Navy Department, considering the contract void, designed to sell, shortly,

the materials collected by him for the purpose of executing it according to his several agreements.

To sum up the whole subject, it appears that Congress, by the act of 14th April, 1842, directed a Secretary of the Navy to make a contract with Robert L. Stevens for a war-steamer, and appropriated a specific amount of money towards the construction proposed. The contract was executed. Mr. Stevens, in good faith, proceeded to perform all his obligations. The contract was afterwards made more specific, its minutest details enumerated, and the time for its completion extended by a succeeding Secretary. The amplest security for its faithful execution was required and given. Officers of the United States were appointed to superintend the receipt of materials provided, and payments for such materials were made by the Government from time to time. A subsequent Secretary of the Navy, without any previous notice to the contractor, suddenly suspended the execution of the contract, and refused the payments stipulated therein to be made; leaving the contractor bound to pay large sums for the materials for which he had contracted in the prosecution of his work. Another Secretary renewed the contract, and extended the time for its execution. The contractor again vigorously and actively applied himself to the execution of his contract. While thus industriously employed, another Secretary again arrested his work, and finally suspended all payments, and referred the subject to Congress. The present Secretary considers himself bound by the acts of his predecessor, and treats the contract as at an end; and Congress, having omitted to act on the subject, he has given notice to Mr. Stevens, under the power to sell, contained in the mortgages executed by the contractor, that materials collected by him will be sold for the benefit of the Government.

It is, therefore, apparent that, without some legislative action by Congress, the contractor, who is willing and desirous of fulfilling all engagements in good faith, entered into by the *direction and under the authority* of Congress, will, by Executive interposition, be subjected (against right, as your committee believe) to very heavy and unjust losses, while the Government will lose the advantages to be derived from the genius, skill, and science of one of the most accomplished naval architects in the country, in the construction of that very sort of war-steamer which the service requires.

Your committee, therefore, on full consideration of the whole subject, recommend the adoption of the following joint resolution:

*Resolved, by the Senate and House of Representatives in Congress assembled, That the Secretary of the Navy be, and he is hereby authorized and required to have completed, without any unnecessary delay, the war-steamer contracted for with Robert L. Stevens, in pursuance of an act of Congress passed April 14, 1842.*

Mr. President, I should have felt disposed to leave this report, and the unanimous recommendantion of the Committee on Naval Affairs, without a word of comment, to the Senate, if I had not been asked to make some explanation, and if the importance of the subject of which it treats, at the present juncture of time, did not seem to require from me some few remarks. Considering the relation which the city of New York bears to this Government, and to the whole country, the committee are of opinion that every reasonable preparation for her defense in time of war, with a maritime Power, ought to be adopted.

I will not dilate on the importance, in a military or naval point of view, of that harbor. Its great importance must be obvious to all minds, who have given the subject of *national defense* any consideration. But I must say, that while thus important, it is the most exposed, perhaps, of any other important city of the first class on the seaboard. Sir, our defenses require immediate attention. The signs of the times are premonitory of war and revolution. Almost every arrival from Europe informs us of warlike preparation by the great Powers of that continent. Upon the throne of France—I say *throne*, for in fact Louis Napoleon is monarch, and supreme arbitrator of the destinies of France, as much

as Napoleon the Great was in his zenith—upon the throne of France now sits a man, whom the necessities of his position seem to compel to a rivalry of his renowned kinsman and predecessor. If we examine the history of Europe, we will find that since the time of Charlemagne, whenever France was under the control of a bold, restless, ambitious, or unscrupulous monarch, she was invariably engaged in long and bloody wars with her neighbors.

In addition to the national propensity to interfere with the affairs of her neighbors, which modern history shows is characteristic of the French, they have, as we were eloquently told the other day, in the able and instructive speech of the Senator from Tennessee, (Mr. BELL,) as they believe, wrongs to avenge, and dishonor to wipe away. France was never more powerful than she is now. Near thirty years have enabled her to recruit the wars of the Emperor; and for twenty years past, she has assiduously exerted all her resources to regain that military efficiency, which has always given her a commanding ascendancy in the affairs of the world. She has regained it. She is at present the cause of disquietude and alarm to all the contiguous powers. She stands in the panoply and attitude of defiance; and no one can say how soon, or where, she will not pour her mighty armies.

But all will agree that no great European war can take place without endangering our peaceful relations with one or other of the belligerents. We are admonished, therefore, not to neglect those preparatory defenses which, in war, would be indispensable for the protection of our sea-board.

We had some severe lessons on this subject during the late war with Great Britain, and it would be the height of fatuity if another war should find us no better prepared for it than we now are.

And yet, sir, I am not exaggerating when I say that we are at this present time quite as defenseless; our cities and harbors are quite as much exposed to hostile incursions, as they were in 1812. They have grown in wealth and population, quadruple what they were then; but when we consider the increased facilities for attack which foreign naval Powers possess, we shall find that, notwithstanding your forts, your most important ports are as vulnerable now as they were in 1812.

Whilst the engines and implements of war have been, of late years, vastly augmented for offensive operations, those for harbor defense have not been correspondingly increased by us. A hostile squadron is no longer dependent on the fickle winds for an opportunity to approach your shores, or enter your harbors. They can hover, at their own chosen distance, on your coast, distracting and alarming the whole sea-board, and pounce, with celerity and precision, under the cover of night, upon the devoted place which they doom to destruction.

Steam-ships of great power and speed have been constructed, infinitely more formidable than any thing which we had to encounter in 1812. Your forts have not been increased or strength-



ened in proportion to the increase of power with which other nations have fortified themselves.

There has always been great doubts entertained, by the most scientific and experienced men, as to the ability of the best constructed forts to prevent sailing vessels, with a leading breeze, from passing them; and there seems to be little or no doubt that steam-ships may be built, which would pass, unharmed, materially, any fort.

Steam-ships may, undoubtedly, be built, which, with aid from the tide, may attain a speed exceeding twenty miles per hour. Such a vessel, in six minutes, might approach and pass any of your forts, at night, without being disabled. One such steam vessel, moored in New York bay, might kindle that great city into flames, and, screaming the proud note of triumph, leave it a heap of smoking ruins. Nothing could prevent such a catastrophe. Be assured, Senators, and let our fellow-citizens everywhere be assured, that nothing could prevent such a catastrophe, in the event of a war with a great naval Power, but a steam floating battery, such as that contemplated by the plan of Mr. Stevens—indestructible, shot and shell-proof, and bearing an armament consisting of such guns, a single shot from which would be sufficient to disable the most powerful man-of-war now launched. One such vessel would be sufficient to defend New York harbor from any force which could possibly enter it. It would combine the impregnable qualities possessed by stone and mortar fortifications with the advantages belonging to ships of war for locomotion. The mere knowledge, by any enemy, that a harbor enjoyed the protection of such a formidable protector, would be sufficient to deter them from hazarding an experiment of its omnipotence.

Now, sir, it seems to me, when one of the most accomplished engineers and naval architects of America is willing to construct a war ship for harbor defense, that we ought, without hesitation, to avail ourselves of his skill and enterprise for such a purpose.

Mr. Stevens is a gentleman of the highest attainments in those pursuits, to which, with hereditary passion, he has devoted the greater part of his life. He is a gentleman of large fortune, and of reputation. He is not an ordinary speculator, seeking a *job* of Government, but a high-minded, patriotic gentleman, who, from elevated and public considerations, and not from motives of pecuniary profit, tenders his skill, science, and experience (unsurpassed, in his department, by those of any one) to the service of the Government. He is willing to connect his reputation with the Navy of the country. He has acquired, by long years of experience and expensive experiments, a dexterity and felicity in design and execution in nautical architecture, which he is willing to place at the disposal of the Government. He does not want to make money out of you; but he desires to confer on the country the benefit of his superior knowledge, whilst, at the same time, he identifies his reputation with the naval history of the country.

He is the builder and proprietor of the yacht Maria, which

beat the America—which, under his brother, Commodore Stevens, achieved that victory over all the naval chivalry of Great Britain—a victory worthy to be enrolled with those other glorious triumphs of American naval valor during the war of 1812—which have done as much to elevate the national character, and inspire confidence and self-reliance in American prowess, as all your campaigns on shore, from Canada to the city of the Montezumas.

The offer of such a man to render his skill available to the service of the country, ought to be met with promptitude, alacrity, and liberality by the Government.

It is not proposed by Mr. Stevens to supersede the use of permanent local fortifications. No one thinks of substituting any floating battery for them. The floating steam battery which Mr. Stevens has projected, is designed, not as a substitute, but as an auxiliary to fortifications. They are fixed and stationary, and invaluable at certain points, where they command the channel of ingress for an enemy. In passing such fortress, the enemy, except under favorable circumstances, may be destroyed or crippled; yet there is no certainty in any such result. In any such attempt by a powerful fleet of war steamers, though some might be destroyed, others would be very likely, under the smoke raised by the broadsides from the fort and its opponent, to force an entrance into the interior harbor; then, without such a vessel as that contemplated by the plan of Mr. Stevens, nothing could prevent the most disastrous consequences.

Mr. Stevens's war steamer, after an enemy had run the gauntlet of the narrows, and become more or less crippled, would move upon him, and interpose an effectual barrier to his nearer approach.

I have the utmost confidence that Mr. Stevens can accomplish all he proposes, if he is met by this Government in the proper spirit of fairness and liberality. He is no visionary, but a practical engineer and ship-builder, who has a high reputation at stake, and which he is willing to risk for the benefit of the country. He is incapable of undertaking to perform, what he knows to be impracticable. I will now read from a work just published by the learned and accomplished President of Columbia College, Mr. Charles King, in regard to Mr. Stevens:

"The extent, variety, and value of Mr. R. L. Stevens's labors and inventions in mechanics should have more fitting commemoration than can be given in any passing notice by one unskilled, as is the writer of this, in the mechanic arts. Yet he cannot suffer this allusion to Mr. Stevens to go forth, without attempting at least to enumerate some of the many services and ingenious inventions and appliances of that gentleman in steam, in gunnery, and in mechanics. From the time when a mere boy, in 1804-'5, he was zealously working in the machine shop at Hoboken, up to the passing hour, he has given his time, his faculties, and his money, to what may be justly described as *experimental philosophy*, and the results have been of great public benefit. Of some of them, the following chronological record may bear witness.

"1842. Having contracted to build for the United States Government a large war-steamer shot and shell proof, R. L. Stevens built a steamboat at Bordentown for the sole purpose of experimenting on the forms and curves of propeller blades, as compared

with side-wheels, and continued his experiments for many months, the result of which we may yet hope to see in an iron war steamer that will be *invincible*, and so should be named. While occupied with this design he invented about 1844, and took a patent for, a mode of turning a steam-ship of war on a pivot, as it were, by means of a cross propeller near the stern, so that if one battery were disabled, she might in an instant almost present the other.

"1848. This year succeeded in advantageously using *anthracite* in fast passenger locomotives.

"1849. Witnessed the successful application of air under the bottom of steamer *John Neilson*, whereby friction is diminished, and she has actually gone at the rate of twenty miles an hour; this was the invention of R. L. Stevens and F. B. Stevens. The John Neilson also has another ingenious and effectual contrivance of R. L. Stevens, first used in 1849, for preventing ill consequences from the foaming of the boiler. In conclusion of this dry and imperfect chronological recital of some of R. L. Stevens's contributions to the mechanic arts, to public convenience and national power, as well as renown, it must be added that Mr. Stevens is himself the modeler of all the vessels built by or for him, and that many of our fastest yatches are of his moulding; and especially the *Maria*, which beat without difficulty the victorious *America*, which in her turn carried the broom at her mast head through the British Channel, distancing all competitors, as she continues to do, I believe, under her new owner, in the Mediterranean.

"Of such a man, not the mechanics only of our city, among whom he has worked, and is well known, but the nation may well be proud."

I said that he had an "*hereditary passion*" for those pursuits to which he has devoted most of his life, and here, sir, my State pride may be pardoned, if I advert to the name of his honored parent, to whose services in practical engineering, mechanics, and other kindred departments, the country owes a debt which it is too late to liquidate now.

Sir, John Stevens, of Hoboken, New Jersey, was one of the most extraordinary men of his age, so prolific of great men. He was the compeer of Fulton, and contributed his full proportion towards making steam, that powerful locomotive agent which it has become. Like Fulton and Oliver Evans, he was in advance of the age in which he lived. Near fifty years ago, he astonished and confounded a committee of the New Jersey Legislature, by the prediction that the time would come when men would travel as fast as a pigeon could fly. They would hear him no longer; they turned from him with pity and incredulity; they told him as "Festus" told "St. Paul" "much learning has made you mad." As he was in advance of his age in relation to the use of steam, so he was in relation to railroads. These he used experimentally in his work yards long before public attention was directed to their importance. He in vain solicited from the New Jersey Legislature permission to connect the waters of the Delaware and the Hudson, many years before the Legislature would permit any such enterprise to be attempted. He did as much, if not more, than any other man to bring the steam-engine for locomotion to its present perfection. When his history is written, his name will rank with the names of Franklin, Fulton, Fitch, and Rittenhouse, among the greatest benefactors of his country, and the human race. His genius and his fondness for practical engineering, he has transmitted to his sons, who are among the most eminent men, in their vocation, of which this or any other



country can boast. It is for Congress now to say, whether this Government shall avail itself of the services of such men, in constructing just such vessels for national defense as the necessities of the naval service require.

Had this Government taken by the hand Fulton and John Stevens fifty years ago, there is no telling how far we might now have been in advance of our rivals in many important elements of national power.

The proposition now submitted to you is intimately connected with the national defense, and the growth and efficiency of your Navy; and I avail myself of the opportunity to make some general remarks on that subject.

Sir, the recent victories of your armies seems to have obscured somewhat the splendor of your naval achievements. I entertain no apprehension however that the country will ever undervalue the importance of the Navy, as a sure reliance for the protection of the national honor and the vindication of national injuries. You are destined—(excuse the word)—but if you continue a united people you will be compelled—to become the greatest naval power which the world ever saw. Yet, apparently appalled at the expense to be incurred in any attempt to rival the lavish expenditures of England and France on their navies, we seem to have been embarrassed as to what was the true course to be pursued. Steam has, as you have often been told, revolutionized war upon the ocean. The leviathan ships with which Nelson annihilated the navy of Napoleon at the Nile and Trafalgar, are no longer invincible.

I have long thought that the improvement of our steam marine has not received from the country and from Congress that attention which it deserves. There can be little doubt, that we are at this moment more inferior, as a naval power, for purposes of immediate defense, compared with the offensive means possessed by other powerful nations, than we were forty years ago; while England, France, and Russia have, of late years, vied with each other in the creation of a formidable steam navy, we have been standing by comparatively passive. In the admiralty navy-list of 1850 of Great Britain, is found one hundred and fifty war steamers, and she is constantly building and launching others. In addition to these, she has between sixty and seventy mercantile steamers capable of being converted into war steamers, and whose war equipments are all prepared. In further addition, she has upwards of eight hundred steamers capable of furnishing formidable assistance for coast defense.

France, since 1815, has never lost sight of the importance of maintaining a navy; she is next after England, now the greatest naval power of the world. She had at the commencement of the present year one line-of-battle ship of ninety guns, with screw propeller. Fourteen steam-frigates, mounting from eight to sixteen guns of heavy ordnance, and many others of smaller size. We shall have in the Navy of this great Republic—in a Navy of

a country whose people, and patriots, and statesmen, (some of them,) are ready to dictate a new code of laws for the nations of the earth, and to throw a fire-brand into Europe, regardless of all consequences, war, or no war. I say, sir, we shall have in our Navy, when completed, five steam-frigates and two steam-sloops, mounting from six to ten guns. Sir, we had better be prepared for a fight before we attempt to bully. This disparity between our naval steam force and that of other powers is growing greater every year. Yet the tonnage of the United States engaged in foreign or domestic commerce, if we include that of our lakes and large rivers, is about equal to that of Great Britain, and far exceeds that of France or Russia.

Now, these three facts being ascertained: First. Our defenceless condition. Second. The disparity of our naval power compared with that of the other great Powers. Third. The equality or superiority of our mercantile tonnage. It becomes a question of great magnitude, what policy is it proper for us to adopt, so as to guard against immense and incalculable losses, in case a sudden war should break out with any of the great Powers.

My mind has been anxiously directed to this subject for many years, and I avail myself of this occasion to throw out a few other suggestions in relation to it.

This gigantic species of warfare it is utterly useless and impracticable, at any cost, to wage with the old-fashioned ships-of-the-line and frigates. Indeed, such vessels would only be built and sailed for the benefit of the enemy. In the present improved condition of naval tactics and steam superiority of Great Britain, there can be no doubt that we must take new observations; a new latitude and departure, if we expect to protect our own shores. We must build a sufficient number of war steamers which shall exceed any which she may have built: first, in celerity; second, in their invulnerability; and third, in their superior destructive qualities.

We must build vessels which, in speed and power, will enable one of ours to cope with half a dozen of hers; vessels, any one of which would be sufficient to enter any of her harbors, and sail through or around any of her fleets.

Now, Mr. President, all this is neither impracticable nor difficult; and in Mr. Stevens you will find not the only American engineer and naval mechanic who can accomplish this great object. We have the coal and iron, and all the raw materials which will enable us, with the aid of all the experience obtained by England and France in steam naval architecture, to commence, *now*, efficient steps for the creation of a steam navy fully equal to anything now afloat.

But, sir, for this purpose you must adopt an entirely new system of constructing your national vessels. By this I do not mean to reflect on the constructors in the Navy; by no means. All of them whom I have known would favorably compare with other naval architects; especially, sir, would I place no one ahead of

the able and accomplished naval constructor in Washington, Mr. Lenthall. You must appeal to the emulation of all the naval mechanics of the United States, so as to draw out the utmost capacity of that sagacious, skillful, and enterprising class.

You must invite them all to enter the field of competition. I do not see why, by the offer of a bonus for each separate class of war-steamers proportioned to the magnitude of each vessel, or by some other plan similar in principle, you should not make available all the skill possessed by any of our American mechanics for the purposes of the Government. They are superior to those of any other nation. I have some knowledge of, and entire confidence in the genius, the enterprise, and indomitable superiority of the American mechanic and artisan. My avocations and favorite pursuits have brought me into personal, familiar, and confidential contact with them. I honor and respect them; and I speak with a confidence founded on knowledge, when I say that they *are superior to those of any nation or age*; and I say, furthermore, that the interests of our country in all those great pursuits in which we are most closely pressed with the rivalry of other nations, enjoying the benefit of cheap labor and more abundant capital, may be safely intrusted to their hands. But then you must give them the advantages which our own resources supply in the cheap raw materials of coal and iron. This you can readily do. You have only to adopt the home valuation, or to assess your present *ad valorem* duty on the actual sales in this country. By doing this you will violate no principle of the Constitution, no precept of the resolutions of 1798. You will only be obeying the dictates of an enlarged patriotism. Do but this, and you will rekindle your forge fires, and re-open your workshops, and our constituents in New Jersey and Pennsylvania, and all over the country, will once more hear the merry ring of the anvil. Do but this, and no foreign war-steamer, nor English, nor French, nor Russian will scream the hoarse notes of defiance on your coast or in your harbors. Do but this, and you will put a fulcrum in the hands of the American mechanics, by means of which they will move the world.

Sir, that they are superior has been proved over and over again: let the following extracts from a newspaper received this morning be added to the proofs. It has been proved by our clippers, whose unparalleled voyages round the world have recently astonished Europe. It has been proved by the speed and superiority of the Collins line of steamers; and it has been proved by the glorious victory of the yacht America:

“QUICK PASSAGE OF THE WITCH OF THE WAVE.---One of the London papers says: A large American clipper-built ship, named the Witch of the Wave, Captain Millett, commander, has recently arrived in the East India Docks, London, from Canton, having made one of the most extraordinary and rapid voyages on record. She has also brought one of the most valuable cargoes of tea that, perhaps, ever entered the port of London, having on board no fewer than nineteen thousand chests of the choicest quality. She is nearly fourteen hundred tons burden, the size of our largest Indiamen, and was built at Salem, Massachusetts, in the course of last year. She proceeded to



California, thence to Hong Kong, and sailed from Whampoa, near Canton, on the 5th of January; made the passage to Java in seven days and twelve hours, then had the wind W. S. W. to N. W. for several days, with light trade wind, and made the Cape in twenty-nine days. Then encountered strong easterly winds from the Western Islands, and took a pilot off the Dungeness on the 4th of April, making a passage from China to the Downs in ninety days, a trip surpassing the celebrated runs of the *Oriental* and *Surprise*, American clippers. Had she not encountered the strong easterly winds up the Channel, she would have accomplished the voyage several days earlier. As it was, she was only four days beating up from the chops of the Channel to reaching the river, while some of our large vessels were nearly a fortnight doing the distance. The *Witch of the Wave* is the object of much interest as she lies in the dock. Her bows are similar to a large sized cutter yacht. By the above it will be seen that she sailed round the world in ten months and a half, including loading and discharging at the above ports. The greatest distance she ran in twenty-fours, on the voyage to London, was three hundred and thirty-eight miles."

Another paragraph is in these words:

"Quite a sensation has been created in the English commercial world by the arrival of the American clipper-ship *Witch of the Wave*, at London, after a run of ninety days from Canton to the Downs—the shortest passage on record. Up to this period the British have retained a nominal advantage in the navigation of this route, one of their traders having accomplished the distance in a few days shorter than any American or other craft; but by this recent achievement of one of our clipper fleet, their last dream of fancied superiority has been dispelled."

And another is as follows:

"THE YACHT AMERICA IN PARLIAMENT.—Colonel Peel, in a recent discussion of the Navy estimates, in the British House of Commons, took occasion to express his surprise that not one word had been said in reference to the circumstance of a foreign yacht having come to England, and, in the presence of the Queen herself, beaten some of the crack English sailing vessels! That, Colonel Peel said, appeared to him a deeply humiliating event. She was an American yacht, and was described as 'the race-horse of the ocean.' Colonel Peel confessed that he was wholly ignorant of nautical matters, although he was conversant with the pastime of horse-racing, and he flatters himself that he could appreciate such an expression as the 'blue ribbon of the turf,' as used by Mr. D'Israeli. Whatever might be the sailing qualities of the American yacht, Colonel Peel declared that if such a defeat had been sustained by the English sailing vessels at the Isle of Wight, there was not a true sportsman in England but would go to any expense to recover back the lost laurels. Colonel Peel stated that it was part of his creed that 'Britannia rules the waves,' but what became of the goddess on the day to which he alluded he could not say; but if she 'ruled the waves' at all on that occasion, she must surely have done so with a downcast look. Colonel Peel's remarks were received with cries of 'hear, hear.'"

I have alluded to those great sources of national wealth, iron and coal, and as they are so intimately connected with the defense of the country, a few more words in relation to them may not be amiss. It has been those products of her soil which has chiefly made Great Britain what she is, or was. These enabled her to fight the battles of despotism in Europe. These were the conquerors of a Napoleon. They are indispensable for *defense*, if not for national existence. The nation which possesses them in the greatest abundance, and can produce them the cheapest, must excel all others. They are infinitely more important now, as elements of national greatness and power, than ever before. The race of competition in this age, between civilized nations, depends upon their respective facilities for the use of steam. Steam on the ocean is to fight the battle of supremacy *there*; and steam on land, in the factory, and on the railroad, is to decide the question of superiority in all the diversified pursuits of human life.

Sir, we should look to them; we have them in abundance. There in the mountains of my own native State, and of her neighbor and sister, old Democratic Pennsylvania, are the weapons with which alone your victory can be achieved. There are the materials from which your thunderbolts must be fabricated. There is the armory from which to clothe your warriors in an invincible panoply. Strike the rocks of these pregnant mountains, and steams of victorious legions will come forth at your bidding. There slumber the unforged fetters of the seas. You have but to fabricate them from the materials there abounding, and you may fling your chains upon old ocean's mane at will, *and then* you will need "no bulwarks, no towers along the steep."

But I may be told, advocating the policy of encouraging the promotion of the production of iron, I am running counter to the principles of my party. Sir, I yield to no one in my sense of abiding obligation, while I represent a Democratic State, faithfully to adhere to the Democratic standard of faith. But surely no one can justly accuse me of not being true to the Democratic party, while I act in accordance with the often-declared principles of Andrew Jackson, and of old Democratic Pennsylvania. There is nothing in the Democratic creed which forbids encouraging the promotion of that which is essential to national defense. Democracy, in my estimation, does not consist in giving or withholding a per cent. above or below the average revenue duty. God help the Democracy measured by such a standard! With me, it is the first duty which I acknowledge to provide for the national defense. It was this elevated view of his duty which impelled the great Chatham to say that he would not permit America to manufacture a hob-nail. Sir, I hope the period is not distant when the cheapness of American iron and coal will not permit Great Britain to manufacture a hob-nail for us, or for any market where we can compete with them on equal terms. Democracy, as I understand, has more immediate reference to the construction of the powers of the Government rather than to the fluctuating policy of discriminating respecting the imposition of duties. That must be controlled by questions of expediency—by the changing modifications of the commercial and restrictive policy of other countries. But it is in the construction of the powers of the Government where Democracy has proved itself the bulwark of the Constitution and the Union. When the reign of terror was upon them—when the fathers of the Democratic party saw, under the rule of the elder Adams, the rights of the States endangered, and every thing tending to the consolidation of all power in this Central Government, they promulgated what I have always considered, since I have directed my mind to political subjects, as the true standard of Democratic faith. I allude to the Virginia and Kentucky resolutions of '98 and '99. Sir, I know that it is a custom with some politicians to indulge in sneers in relation to those resolutions, and to taunt those who respect them with being abstractionists, impracticables, and dreamy theorists.

Sir, I care little what terms—whether Federalist, State-Rights, or Abstractionists, are applied to me; but I will say what I believe, at the hazard of every consequence, personal or political, and without regard to popularity or unpopularity—the one has no charms to swerve me from what I consider right, and least of all has the other any terror.

I will not say of popularity what Horne Tooke said, that if it was to come in my way “I would kick it out of my way,” but I will say, that I trust I shall always have courage enough, of whatever sort may be needful to despise any popularity, purchased by any dereliction of principle or any sacrifice of personal honor or independence.

But, sir, the resolutions of '98 and '99! the resolutions! I have to say of them that, in my opinion, they are the most valuable legacy, next after the Constitution, which the early patriots of the Republic have bequeathed to the country. They have, in my opinion, done more to preserve the Constitution from infraction, and to keep this Government within its limits, than any other production of political wisdom from the day of their origin to this time. They have been the touchstone by which wild and visionary theories have been tested, and found to be valueless or dangerous. They have been the light-houses along the stormy shoals and breakers of politics—warning us of the only safe and smooth channel of navigation for the ship of state.

I know well that their enemies have pretended to find in them the germ of nullification. But, sir, I perceive no such dangerous heresy in any of them. I see in them a plain common-sense practical scheme for the administration of this Government. A scheme by means of which the Union and the Constitution may be preserved inviolate, the rights of the States respected, and the Government enabled to exercise all those national functions designed to be performed by it; while it is preserved and restrained within those barriers with which it is invested by the Constitution.

Sir, as a citizen of a small State, which has as much to dread from a dissolution of the Union as any other State of this Confederacy, I acknowledge my gratitude to the great men who promulgated those doctrines, and to their disciples, who, since that time, have remained steadfast to the Democratic principles they contain. Those are the principles by which I would have my Democracy estimated; by them I will consider myself bound; upon them and the Constitution, a long time ago, I planted my standard. On the one side is inscribed, “Slavery is no sin of ours;” on the other side is written, “The Wilmot proviso is unconstitutional.

Thus much, sir, I have felt bound to say in vindication of myself as well as of the Democracy of the patriotic State which sent me here, in relation to the encouragement of the product of iron.



"I hope I don't intrude," as Paul Pry said. I hope that I have not interfered with the prerogative of others—that I have not trespassed on the premises either of young America, or old——

A SENATOR. Foggy.

[Mr. STOCKTON hesitated; and, looking around to see who addressed him, continued.]

I thank you, sir; but my memory did not fail me. No sir; my tongue refused to utter the ungracious phrase. The instinctive power of my heart forbade it.

Thank God for the inspiration.

[Turning to Gen. CASS, he said:]

No, no, "*Conscriptus pater*." I have, as an American citizen, neither the heart to conceive nor the tongue to speak any sentiment but that of the greatest personal respect and the highest admiration and appreciation of your long and faithful public services. May God prolong your life and health and mind, and may the spirit of your country's gratitude rest upon you.

Mr. President, sometime since, in another place, I was as unexpectedly called upon as I have this moment been to say a few words in commendation of a distinguished public man. That was put down an "*explosion*," and this may be recorded as "*explosion second*." Well, sir, I can have but little left, and I propose now to finish the business of blowing myself up by making this declaration before the Senate and the country. Sir, I acknowledge my responsibility to the national Democracy with reference to national questions, respecting the rights of the States and the powers of this Government; but to New Jersey alone I hold myself responsible with reference to questions of a local or transitory character.

Mr. President, I am done; and if your able reporter will do me the justice which he has heretofore done to myself and all others, why then, sir, political quackery may make the most of it.







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SPEECH

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H. R. OF  
**MR. STORRS,**

ON THE PROPOSITION

**TO AMEND THE CONSTITUTION**

OF THE UNITED STATES,

*Respecting the election of President and Vice President,  
In the House of Representatives Feb. 17, 1826.*

Mr. STORRS, of N. York, addressed the House, (following Mr. McDUFFIE) as follows:

The propositions to amend the Constitution, now before us, which have been submitted by the honorable gentleman from South Carolina, (Mr. McDUFFIE) are not altogether new to our deliberations. So much of them as proposes to change the present mode of electing the President and Vice President, by establishing within the several States a uniform system of voting by districts, was introduced into this House at the last session of the Sixteenth Congress, and finally rejected. The other branch of the amendment, which takes the second election from Congress, is now for the first time, at least since I have had the honor of a seat here, presented for examination.

It becomes us, sir, in my humble opinion, to approach this subject with the profoundest reverence for this Constitution, as the work of that illustrious body of patriots and statesmen, who seem to have been raised up by Providence at that peculiarly eventful period, to guide, by their eminent wisdom, and exalted public virtue, the councils of that convention, the result of whose deliberations was to fix the future destinies of this great empire of freedom. They were men originally highly gifted by nature and deeply versed in political knowledge—they had been educated in the principles of civil liberty, and well understood the temper and genius of their country, its interests, and the spirit of its institutions. They justly considered that the go-

vernment which was then to be framed, was to be adapted to an educated and enlightened country, and to be sustained by moral sentiment, and the political virtue and justice of the People. The lights of experience and history which these men followed, were neither "few, faint, or glimmering" in their eyes; and I might, perhaps, with rather more justice than was shown by the hon. gentleman from S. C. reverse the opinion which he pronounced on their comparative merits, and say, that the most ordinary member of that convention knew more of the true principles of the Constitution, than the whole common mass of politicians in our day. The well known encomium recorded in history, which the virtues of this class of men, during the Revolution, elicited from a British Senate, was no less just and candid, than honorable to them, as the testimony of the first statesman of that age and country. They made no extraordinary or officious pretensions to patriotism, but are best known to our generation by their works, and the blessings which this great and prosperous nation now enjoys. For sound views of the theory of government, just application of political principles, and as the purest models of eloquence, the public papers of the statesmen of our Revolution have never been excelled, and will long remain unrivalled.

The times, too, were auspicious to the work before them. The pressure of public calamity had purified the souls of men—the common dangers of the Revolution had bound the country together, as brethren of one family—its sufferings had taught them the value of liberty, the necessity of union, and mutual forbearance with each other, and the preciousness of the inheritance which was to descend to us, their children. No selfish passions or unhallowed purposes of ambition tainted the hearts of those who were called to that convention by their countrymen. The wisdom and the works of such men are not to be handled with temerity, and I may surely be permitted to speak for myself, when I say that we should rather distrust our own political knowledge, as well as our ability to add any substantial or valuable improvement to a system of government, which came from the hands of men who seem to have been moved by the influence of inspiration itself. I trust that, on an occasion so serious as this, we shall lay aside all prejudices and feelings, and remember that, when we tread this sacred path, we move on holy ground.

It would have been more satisfactory, and we might have formed a better opinion of the operation of the

plan which the honorable mover of this amendment intends finally to introduce, had he furnished us, at once, with all the details of his system. The naked propositions which alone are involved in the resolutions as they now stand, might then have been entitled, perhaps, to more comparative merit than can be allowed to them as merely insulated principles. They may deserve more or less favor in our judgments, as they may, or may not, be connected with distributions of the electoral power which shall preserve more or less of the original political system of the Constitution. As the honorable gentleman has not favored us with any particular details, we must consider these propositions chiefly on the intrinsic merits which they deserve, as operating to expunge these particular features of the Constitution—and in this view of their expediency, they propose an entire change of the principles on which the whole structure of the political system of the General Government is founded. The most difficult question which presented itself for adjustment to the Federal Convention, was this distribution of the electoral power in the choice of the Executive. The peculiar difficulties which pressed the convention on this delicate point, were at last overcome, and it was finally arranged on principles much more satisfactory than the best friends of the Constitution at one time supposed the form of the Confederacy would admit of among them, consistently with the separate sovereignty of the States, and the just relative influence and interests of each. This part of the plan of the Federal Government was received in the State Conventions with less objection than almost any other. The State Conventions well understood the basis and principles of union, on which the Government rested, and in all the discussions which the Constitution produced in these Conventions, it was scarcely denied or questioned by any, that, in this particular, the plan was the wisest and best which the Convention could have devised, to secure the objects of the Union. It can hardly be inferred that they could have mistaken their own views, or that the future operations of this part of the system, were not clearly foreseen, and well understood.

The structure of this part of the Constitution has also been revised and amended under the administration and influence of many of those who first put the Government into operation. It is well worth our notice, too, that this revision and amendment took place at a period immediately succeeding the contingency which devolved the election of a President on the House of Repre-



sentatives, and when the evils of an election by that body, whatever they may have been, were directly in the view of those who proposed that amendment. It was also a time when the prevailing doctrines were peculiarly auspicious to the success of any fancied improvement which should infuse into the system a larger portion of popular power in the Presidential Election, if such an object was more consonant to its original principles. The professed object of the Congress of 1802, was also not so much to change the distribution of the elective power as to give the true constitutional impulse to the system, in its practical operation, which was alleged to have departed from its primary intention of carrying into effect the popular will. Whether this has, in fact, been the only result of the amendment then adopted, it is not material to this part of the discussion to inquire. If, however, it has led to consequences which were not then foreseen, or if feared, not effectually guarded against, we may now be admonished of the dangers which commonly follow every disturbance of the fundamental principles of any settled form of government, however speciously amendments may be maintained, or however highly we may estimate our own foresight. The principles on which the political revolution of 1801 was produced, would also have tended powerfully to promote the result which the amendment now offered to the House assumes to be so desirable. Those who then came into power, out of the political struggles during the previous administration, rested much of their claims to public confidence on their support of the Rights of the People. During the administration of Mr. Jefferson, this confidence secured the political power of the Republican party: and yet, Mr. Chairman, during the whole period of that administration, this amendment of the Constitution which is now pressed upon us as so clearly indispensable and vital to the system, escaped the attention of the keen-sighted politicians of those days, or, if considered at all, was never presented to the People as an amendment called for by the principles on which their power was established. The dangers of an election by the House of Representatives were then fairly and directly before the Congress and the country; and if it is now so palpable that such an election contains within itself the alarming innate constitutional principles of corruption, of which we have heard so much from the honorable gentleman from South Carolina, it must be at least admitted, and we must reflect upon it with wonder, that the sagacity of the statesmen of Mr. Jefferson's

Administration had not detected and reformed this vicious inclination of the system.

Whatever may prove, in the final vote of the House, to be the result of this discussion, it is, perhaps, not to be regretted, that the propositions now before the committee have been moved. The subject has certainly excited some interest in many of the States, and our deliberations here, may, perhaps, tend to develop the real effect to be produced by the amendment, and place its expediency, in public opinion, on its true merits, whatever they may be. In the course of the remarks of the honorable gentleman from South Carolina, he was pleased to derive many of his illustrations from the past course of political events, in the State which I have the honor, in part, to represent; and I am not disposed to deny that such has been, sometimes, the effect of her domestic dissensions, on her true interests and prosperity at home, and her just influence in the Union, that many useful lessons may be derived from her experience. The evils which have afflicted that State, may chiefly be traced to an arrangement of the power of appointment in her original Constitution, unsuited to the times which followed its adoption, and the great extent of State patronage which has been the necessary consequence of her increase in population and wealth, and the great variety of those political institutions which have resulted from her prosperity. Ferocious systems of politics, demoralizing institutions of party, and intolerant proscriptions of virtuous and honorable men, have sometimes stained her annals and destroyed her moral power. But, sir, the People there have laid their own reforming hand on their political institutions. Their present Constitution has dispersed the distribution of that enormous accumulation of patronage, which tended to pollute the administration of her Government—the old spirit of party now merely lingers for a while around a miserable remnant of its former idolatry, and public men must there be now brought to the standard of unbiassed public opinion, and tested by their political virtue.

The honorable gentleman has referred us to a recent event, as an expression of the true sense of the People of that State, in favor of a part of the amendment embraced in his resolutions. I shall, certainly, at all times, feel the highest respect for the opinions of that People, and especially on a mere question of expediency. But, in looking to the late vote of that State, in favor of a district system in the Presidential election, I do not find in it that satisfactory evidence of their wishes which I

should desire to have on every question affecting their State interests, before I yield up my own opinion. The census taken nearly a year ago, shows that the State then contained nearly two hundred and seventy-six thousand qualified voters, and I believe that their number is rather underrated when I estimate that at the last November election three hundred thousand electors were entitled to vote on that question. Now, sir, the returns of the vote show, that, on that proposition, about two-thirds of the electors of that State expressed no opinion whatever. The whole number of persons who voted, both for a general ticket and district system, was only about one-third of the State; and, of this number, only a majority of some six or eight thousand preferred the district system, and the whole vote in favor of the district system, was but a comparatively small part, (about a *fifth* or *sixth*,) out of *three hundred thousand* electors.

Though, as a general rule, I should not offer, here or elsewhere, any other criterion by which we should judge of public sentiment than the sense of the People, expressed in its proper constitutional forms, yet when, on this peculiar subject and occasion, I am referred to such a vote of my own State, as evidence of the actual wish of that People, I must be permitted to doubt if there is justly to be derived from it any fair or satisfactory conclusion of the state of public opinion on this matter. This vote is susceptible, too, of other explanations, which authorize us to make a very large deduction from the value of the illustration, which was drawn from it by the honorable gentleman from South Carolina. The time and circumstances under which this question was presented to the People of that State, were peculiarly unfavorable for eliciting a full and fair expression of public sentiment, upon the expediency of the proposition. The course of political events in the State, for some years past, is well known here. In the renovation of her Constitution, they have been lately thrice called to the polls of the election. Scarcely had the agitation of that reformation of her system, and the subsequent elections of her State and local officers, subsided, and every thing seemed to promise her a long respite, if not lasting repose, from her severe and bitter trials, when an insane Legislature, under the influence of infatuated and desperate party councils, shamelessly bid defiance to the known public will, and dared to try their strength against the mighty indignation of an insulted People. They found themselves again called to a new and unexpected contest



with corrupt and lawless authority, and when the anxious crisis of their moral power arrived, they rose in the strength of freemen, and, breaking the feeble chains of party, overwhelmed the usurpers of their rights, in one common and undistinguishable destruction. When, sir, history, faithful to the day in which we live, shall record her annals, the long train of ruins which followed that tempest of popular indignation, shall mark out her path to future times. Having successfully wrested from the Legislature this right, so long and unjustly withheld, the People of that State, exhausted in these repeated political conflicts, relapsed from the high excitement of that interesting period, and reposed in too confident security. It was in this state of comparative apathy that a specious and insidious proposition to district that State was presented to them. In this repose, they have been shorn of their strength in the election of the President, and suspicions have prevailed, not founded on slight observation of past events, or imperfect judgment of the future, that the tendency of this suicidal policy may chiefly be to paralyze her State power and influence, and enable party leaders to bring into market a large share of her electoral votes, who would otherwise despair of success on a general ticket, throughout the State.

Before I proceed to the particular merits of the amendments now before us, I will ask the attention of the committee to an examination of some parts of the political structure of the Constitution, and the principles on which the elective power, in the choice of the President, was organized. In reforming this system of Government, it is necessary that we should first form for ourselves just views of what these principles really are. It will not answer, on so grave a subject, to assume, that they were, or ought to be, what we may merely desire them to have been; and then deduce from any hypothesis of our own merely, the expediency of improvements which we propose to engraft upon the system, and their consistency with the original principles of the Constitution itself. The honorable gentleman from South Carolina assumed, as first principles, throughout the whole course of his remarks, that the original adjustment of the electoral power was intended to obtain the sense of a majority of the People of the United States, in the election of the President; and he reasons throughout on the assumption, that, in this adjustment, we find the introduction of the democratic representative principle into the system—that the plan of a district system, which his

amendment proposes, is most congenial to the spirit and intention of the Constitution, in the operation of the elective power, and that the general ticket system tends to subvert and defeat the fair expression of the will of a majority of the People, in the election. If these positions (and I have endeavored to state them with precision and fairness) are not sustained by the Constitution, the foundation on which this part of the amendment, and the argument for its adoption, rests, are unsound in principle—they carry with them no recommendations to our favor or support, and every conclusion which has been drawn from the various views in which the operation of this part of the amendment has been presented to us, must be essentially vicious.

I concur in the opinion expressed by the honorable gentleman, that the exercise of the power of choosing the Presidential Electors by the State Legislatures, is neither warranted by any fair construction of the Constitution nor the spirit of the system. My opinion, however, of the unconstitutionality of that assumption of power, is founded on views of the principles of the Constitution, essentially different from those on which his amendment is founded. I shall have occasion to notice this point in another part of my remarks, and will not stop to examine it here.

The first inquiry, then, directly before us, and which must be answered before we can proceed to any illustration of the true character and effect of this amendment, is, What are the true Constitutional principles on which this elective power was adjusted? I dissent entirely, Mr. Chairman, from every fundamental position which the honorable gentleman has assumed, and hope to be able to convince this Committee that the amendment cannot be sustained on any principles which can be found in this Constitution.

The great end to be accomplished in the formation of the Constitution, was the establishment of a government which should be adequate to the national objects, in which, as one People, we had common interests, and which, at the same time, should preserve, in the adjustment of the principles of the system, the just influence and power of the several States of the Confederacy. The parties to this compact came together in the character of separate and independent sovereignties. They were *distinct sovereign communities* of People but in all that related to their external relations and their common security, as well as in much that concerned their domestic and internal prosperity, their true and

obvious policy was the same. The formation of a common government for any of these purposes, however, was attended with great moral and practical difficulties. The natural situation and advantages of some of the States, and the character and habits of the People, had led them to look to commerce and navigation as one of the chief sources of their future prosperity. Other causes, combined with some of these, had in some degree established a different policy in other States, more suited to the existing state of their particular interests and social institutions, and perhaps more compatible with their safety. They differed greatly from each other in relative power and population, and it was foreseen that many causes arising from the peculiar advantages, (and especially from the crown lands within their territorial limits,) which some of them possessed, would necessarily increase this disparity in future. In several of the States there existed common political interests, peculiar in their character, and closely connected with their internal peace and security, and perhaps their very existence, which these States could never safely subject, in any degree, to the operation of any system not under their own direct and exclusive control. Public opinion, arising, in a considerable degree, from difference of situation and interest, education, and particular habits of thinking, had established in many of the States different notions upon many of the principles which enter into the distribution of political power in representative government; and, although in the great original outlines of that system, the Constitutions of the State Governments were organized on the same general principles, yet we were not in this, as well as in other respects, altogether a homogeneous people. It was a most difficult and delicate matter, calling for all the sagacity, prudence, and forbearance, as well as political wisdom, of the ablest and purest men, to reconcile in any way, and to unite, even for the most clearly desirable ends, under one frame of government, the various and distinct, if not, in some respects, incongruous and repugnant interests of the parties to the Federal Constitution. If the secret history of the Convention shall ever, as it probably will, be fully disclosed, we may perhaps find that at one time its actual dissolution was considered as hardly problematical.

By the then existing systems of government, the security of all these various interests of the several States was confided, under their own constitution:



al forms of government, to legislatures immediately responsible to them alone. It was to these bodies that the protection of their civil rights was directly entrusted. The power and resources of the States were in the hands of these legislatures, as the immediate guardians of the common political interests of the People who created them. In the formation of a compact between the People of the respective States, which should create a more extended and combined national government and confederative Republic, they were called upon to take from their State legislatures many of the powers of sovereignty which had been vested in them, and to confer those powers on the Federal Government. In the distribution not only of those powers, but in all those which should be incidentally accessory to the new system, they were most sensibly alive to the security of their separate interests, and the preservation of their just relative political influence in the peculiar system which was to be established, more or less, on the basis of the popular principle of a representation of the People of the several States, as different sovereign communities. In the adjustment of the Executive power of the Union, in all its branches, the Convention were met with the full pressure of these various influences. It was natural that the People of a country, on which the hand of tyranny had so recently inflicted the most frightful calamities of despotic vengeance, should look to the organization of the elective and executive power with the keenest suspicion and most watchful jealousy. The example of other countries, too, was before them. It was this power which, in all Governments, was most disposed to strengthen itself, and which, in this, might find its policy in weakening those interests and influences, to be here secured by the Constitution to the People of the several States, and which might obstruct its path. Experience may, indeed, have shown, in the operation of the Government, that those fears, which were entertained when this Constitution was presented to the People for their adoption, were more or less unfounded, and that the Executive power is, in truth, much weaker than it was theoretically supposed to be. Be that as it may, we are seeking, in this discussion, to ascertain the true principles on which this power was intended to be adjusted by the framers of the Constitution and the People of the several States who adopted it. It is then, Sir, in my opinion, a compact between the People of the several States with each other of the respective States, as distinct, sovereign, political, and primary communities. It

is not to be treated as the creature of the State Legislatures. These were not parties, as Legislatures, in any sense, to this compact. The Constitution, throughout, speaks of the parties to the compact in the character of such distinct State communities. It was to be ratified by the Conventions of "*the States*." The House of Representatives is composed of members chosen by "*the People*" of the "*several States*." Representation and direct taxes were to be apportioned among the several "*States*." Each "*State*" shall have at least one *Representative*. The Senate shall be composed of two Senators from "*each State*," chosen by the "*Legislature THEREOF*." In the choice of a President by the House of Representatives, the votes shall be taken by "*States*"—the "*Representation* from each State having one vote." The Judicial power shall reach all cases between two or more "*States*," &c. and between "*a State*," or the citizens "*thereof*," and "*foreign States*." The sense in which this term is so obviously used throughout the Constitution, is founded on the principle which I have before stated, and there is not, in my judgment, a single instance, in which it has been used in that instrument, which does not fairly admit of that construction which is so much in harmony with the moral and political considerations which entered into the structure of this Government. It is true, that the *legislative* power operates *equally* on the People of the several States, and their political rights and duties are common—and, so far as the Government, incidentally from its structure, and more directly in the system of general legislation conferred on Congress in certain enumerated powers, produces that equality, it must be considered as a national or municipal system, and as emanating from the People of the United States, as one common mass—and it seems to me that, in this point, the supporters of State rights have commonly mistaken the just foundation of their principles, and endeavored to derive from mere rules, applicable to the construction of these grants of power, the great principles of security to the rights reserved to the States in this system of government, and its operation. This reservation and these securities lie, in my opinion, in very different parts of the system, and in none are they more vitally concerned than in the distribution of the electoral power which we are now considering. It is a great error to treat this system as founded on the pure, popular, representative principle, (which the amendment proposes to adopt,) in the structure of any branch of the government. The

Senate is established on no such basis. The composition of the Representation of the States in this House is governed by no such rule. There is one interest which goes to make up the relative numerical power of some of the States here, which directly subverts the whole foundation of popular representation in a free government, and the smaller States are secured one Representative at least, on principles which have no necessary connexion with the population of those States. The distribution of the electoral power in the choice of the President by the several States, has been graduated among them by their collective numerical power in this House, and the Senate, which carries in it the ingredient of all the federative as well as representative principles which entered into this political system. The compromise, which produced this Constitution, is illustrated by these views of the subject. The representation in the Senate secured the equal power of the State sovereignties, (not their Legislatures,) in Congress, and in other respects these sovereignties there hold the exercise of the Executive power, in some degree, under their own control. The slave-holding States retained in their representation in this House an adequate security for that interest, and the compensation, whatever may have since proved to be its value, which the free States received for that concession, is also to be found in the same instrument. The deductions which I draw from these first principles of the Constitution, are, that in the election of President, the expression of the will of the *People* of the *several States*, as *distinct political communities*, was intended to be preserved inviolably in that election.

The primary object of the exercise of that elective power was not to collect the sense of the *People* of the United States as one common mass, but as representing the will of separate independent Republics. They, as the *People* of the *several States*, were the *parties* to the compact, and not the State Legislatures. A construction different from this is not in harmony with the nature and analogies of the constitution, and goes to expunge the expression of the public sentiment of the *People* as *States* totally from the election. The exclusion of the power of the State Legislatures from the choice of the President, must be the necessary political consequence of this view of the system, unless we admit that it may have been the design of the framers of the Constitution to give it an effect which might render the President the mere creature of the State Legislatures, in known hostility to the popular will of the States. It



Is not an answer to say that the State Legislatures represent the will of the State sovereignties. They do on all the points of power conferred upon them by the People of the States; but this right of choosing the electors for President is derived from the Constitution of the General Government, and conferred on, and fixed in, the People themselves. That part of the Constitution which treats of the choice of the electors, is, in my opinion, perfectly reconcileable with the principles which I have advanced, and cannot fairly receive any other interpretation. The spirit of the compact and structure of the system, conforms to such an exposition of the terms. It is said, that "Each STATE shall appoint, in such manner as the Legislature THEREOF may direct, a number of electors equal to the whole number of Senators and Representatives to which THE STATE may be entitled in the Congress." If, by the word State, is here meant, as in other parts of the Constitution, the different communities of People which constitute these bodies politic, and the Constitution did not intend a departure, in this particular instance, from that sense, the interpretation of this clause is clear, and especially more so, if the popular will was at all times to be preserved as a constituent ingredient in the Presidential election. The absurdity of the consequences to which a contrary construction would lead, is a strong argument to show that this power was never to be left to the State Legislatures. The Constitution has prescribed that Representatives shall be chosen by the persons entitled to vote for the most numerous branch of the State Legislatures; but has not directly fixed the qualifications of voters for the Presidential election. Under the notion of a broad discretion vested in the State Legislatures, those bodies might devolve the choice of the electors on a different class of citizens, and of other qualifications. Nay, sir, there can be nothing to prevent them from vesting that power, if they have it, in a board of Bank directors—a turnpike corporation, or a synagogue. The consequences which have flowed from this assumption of power by the State Legislatures, and its effect at times on the result of the Presidential election, to say nothing of its frequent abuse, have been well stated by the honorable gentleman from South Carolina. I am not disposed to differ with him in opinion on the course of the Legislature of my own State in this matter. New York has not, however, been the only State in which this power has been assumed by the Legislature. In the State of South Carolina, the People have not exercised this right,

and the direct expression of the popular will of that State in the election, has not been heard since the adoption of the Constitution. I hope, then, when the People of that State come to its full enjoyment, they will not be compelled to receive, as it came to the People of New York, in the humiliating form of a favor, that constitutional franchise which South Carolina has been so long entitled to demand as a right.

But, Sir, to return from this digression—the jealousy which the People of these States felt on this point, appears more clearly when we consider this elective right as a *State power* in connection with other, somewhat analogous, parts of the Constitution. The scrupulous care with which they secured the exercise of this power from the interference of Congress, is worth our notice here. The Constitution has provided that the “*times and manner*” of the elections for Senators and Representatives, prescribed by the State Legislatures, may be altered by Congress; but the choice of the Presidential electors, is taken completely beyond the reach of any interference by the other States, and all power over that subject is entirely withheld from the Congress. In the transfer of the election to the House of Representatives, on the occurrence of the contingency which devolves the election on that body, though the numerical power of the large States has been surrendered, and the small States, in that event, received their equivalent for the loss of their equality in the primary election; yet the same federative principle is preserved in the ballot. “*The representation from each State shall have one vote.*” If, sir, we examine this Constitution, and reflect on the symmetry and harmony of its structure, and the complex and seemingly irreconcilable principles on which the political interests of the States were to be united and preserved in the Federative system, and consider only to what degree the prosperity and happiness of this nation has already advanced under its auspicious influence, we are struck with wonder and admiration that it is the work of human wisdom only.

The right of choosing electors in their own way, being thus retained by the States, by the original compact of the Constitution, is to be exercised as they only shall deem best for the preservation of their just political importance in the Union. When the larger States consent to surrender it, or suffer themselves to be broken up into fragments, under the district system of an amendment; which proposes to melt down into one common mass the People of the several States, they have de-

stroyed their strength, and will at last find their real interests sacrificed by the operation of this distracting policy. Every step which is taken towards this system, approximates to a consolidation, which must, finally, annihilate their influence in the Confederacy. The amendment of the honorable gentleman from South Carolina, strikes at the vitality of their political power, and prostrates them at a single blow. Fasten this fatal system upon them by Constitutional authority, and the measure can never be retraced. If, in the progress of the Government, peculiar natural advantages, the enterprize of the People, or any causes whatever, have changed the relative power of the free States in the Presidential election, it is not only what was foreseen at the adoption of the Constitution as probable, but they gave in the compact a fair equivalent, and what was then received as satisfactory, if not all which was asked. But, it is not the free States alone which are concerned in the consequences which must result from this dismemberment of the power of the States. It is a surrender of the sovereignty of all, and every innovation of principle, which disturbs the original adjustment of the power of the States, and gives the system an impulse towards an unmixed democracy, secretly undermines their security. The relative ratio of increase in population among the States, has steadily, from the first adoption of the Constitution, advanced in one direction. Every successive census and apportionment of representation here, indicates an approach to that point which may give to the free States two-thirds of the numerical political strength of this House. The State sovereignties now hold this power in check, but every movement which disturbs their stability in this system, weakens the foundations of the Government. The State which I have the honor partly to represent, has as deep a stake in the preservation of this Government, as the smallest State in the Union. I trust that she will forever feel how closely she is allied to them all in the common interests, the prosperity, and the common glory of the nation.

But, sir, if this compact between these States is now to be reformed on a different basis from that on which it was originally established, and it were even desirable to place the elective power in the choice of the President only,) without touching any other part of the system) on the principles which the gentleman from South Carolina has urged in support of his amendment, I ask if he is ready to adopt them to their true extent?



If it is now expedient to adjust this power, on the principles of a purely democratic election, which shall respect the will of an *actual* majority of the People, will he consent that we meet him with his own arguments, and conform this compact to his own theory? The operation of the system is confessedly unequal and partial in many respects, and was originally admitted to be so. But if we are now to expunge those features of this part of the system, which produce these inequalities of political power among different portions of the People, why does he not propose at once to establish a popular election within the States, and apportion the electoral power equally between them, according to their respective numbers of free citizens? Will he consent to give up the power which many of the States have retained in this election, on other principles? The amendment now before us preserves this inequality still, and so far from being calculated to obtain, in the election of the President, the will of an actual majority of the People, must operate on principles which may defeat the choice of that majority, and yet unite a majority of electoral votes in favor of some one candidate. It appears to me that, in this respect, the amendment does not conform to the principles on which it is supported; and it must undergo at least one essential modification, before it can produce the result which the gentleman from South Carolina deems so important to be attained, in the election of the President. The reservation of power which it contains, growing out of the extent of the slave population of the States, is contradictory to the principles on which he so highly recommends it to our favor.

If, then, Sir, I have not mistaken, in this discussion, the first principles of the Constitution, this part of the amendment before us is incompatible with our system of Government. It has been supported, however, by several considerations growing out of the operation of this elective power, which require some examination, before we assent to its expediency. The gentleman from South Carolina entered into a comparison between the merits of the district and general ticket systems in the United States, and inferred, from the views which he presented to us, that the former was to be preferred. He introduced this part of the discussion, by stating that, whatever might be the rule, it was desirable that it should be uniform in all the States. This, Sir, must depend on the extent to which we may be disposed to apply this principle to the exercise of the elective power,

in any constitutional amendment upon which we may finally agree. If uniformity is desirable, (and it may be more or less so, in all systems,) it is most consonant to a representative system, to introduce that uniformity of rights, which tends most to equality, not only in form, but in more substantial and important matters. If it is admitted that the elective right is a State power, the mode of choosing electors must be adjusted by their particular views of their own interests, and on principles which they themselves think to be most conducive to the security of their just influence in the Presidential election. The People of the several States having subjected this right to their own regulation, may find much of its value to consist in preserving it under their own control. If perfect equality of political power can be attained in all the States, I am not certain that I should not prefer to adopt the district system; but, under the present distribution of the elective power, (which this amendment leaves untouched) there is not to my mind any value in this principle of uniformity, but its name, and its introduction may be adapted to produce very great inequalities in the results of its operation. The comparison which the gentleman drew with great accuracy, between the present operations of the different elective systems adopted in the States of N. York and Virginia, presented the results of these diverse adjustments of this State power in a very striking light. It may well happen, in so large a State as New York, where no direct common interest or general influence is in active operation, that her electoral vote may be divided between two persons in the ratio of 19 to 17, while in Virginia, her undivided strength of 24 votes may be given to one of the candidates, and thus produce the singular result that the effectual power of New York in the election, would stand, as the gentleman justly concluded, compared with Virginia, as only 2 to 24. He asked us, "if such injustice could be tolerated?" There is a plain remedy for all this yet within the control of the People of New York, which may preserve to that State her real elective power, and by which these States may both stand on principles of uniformity, and at the same time preserve also their constitutional equality of right in the election. To correct this possible unequal result, by districting the State of Virginia, might virtually annihilate the entire power of both these large States—but if New York should change her present system, and adopt the plan of a general ticket, she may resume her proper influence, and both States may retain their respective constitution-

al power in the Presidential election. Distraction of public opinion is, indeed, a great evil in any of the States, but the remedy is not to be found in the diffusion of a principle among them all, which necessarily tends to spread that evil with it wider. If the district system is so much more republican in principle, and truly democratic in its operation, that the spirit of our Constitution, in the adjustment of the power of the States, required its adoption, Pennsylvania, Virginia, and other large States, would probably, before this time, have discovered the political virtue of such a system. One system must, indeed, be necessarily better than another, as the honorable gentleman from South Carolina justly said. As a general abstract proposition, it may be undeniable, if the objects which the several States desire to attain be the same, and they have the same interest to cherish, and there exists at the same time no unjust inequality between them. But it is clearly not better that some of the States should risque the effect of an amendment to the Constitution which may jeopard, by any change of system, those interests, for the preservation of which, they became parties to the compact, or destroy the rights which they have reserved to themselves under it.

It is said by the honorable gentleman, that the operation of a general ticket, destroys the vote of the minority in a State, and that the consequence of that system is, virtually, to transfer the votes of that minority to a candidate whom they perhaps dislike or abhor. This argument conceals within itself a fatal error in principle. It indirectly assumes, clothe it in what dress we may, that minorities are entitled to representation as well as majorities. If there is any soundness in the position, or any foundation for complaint, we must recollect that the same result must happen, more or less, not only in the district system, but in all elective systems whatever. The only real difference, in principle, in the two plans before us, is, that the minority, on the plan of a general ticket, may be much larger than the minority of a mere fragment of a State on the district system; or, we should rather say, that such a minority appears larger, only because it is a congregation of lesser minorities. But it can never be admitted as a just foundation for any argument whatever, in any elective government or system, operating in a large or small State, or any where, that the minority have any rights like these. If, in the choice of the President, the elective power is a *State* power, the general ticket system is founded on



sounder elective principles than the district plan; and it is, *a fortiori*, more so, if this part of the Constitution was adjusted on the principle, assumed by the honorable gentleman, that the object of the Constitution was to obtain the sense of a majority of the People of the United States, in that election. The first, and only certain mode of obtaining the sense of a majority, in a particular State, or of the whole People, must necessarily be by a general vote, throughout that State or the Union. If a general vote in the Union is not resorted to, the next mode of ascertaining, or rather approximating to, the will of a majority, would seem to be the distribution of the elective right among the largest masses practicable. It is true, that, if you divide the entire vote, even into two masses only, in the election, a single chance is created, that the minority may perhaps control (for they might clearly paralyze) the majority. The more you multiply the number of these masses, the further we remove the final result from that which we profess to attain—the will of a majority of the whole Union. To illustrate the principle for which the gentleman contends, he supposes a case might happen, in which, by the general ticket system, the vote of the State of N. York might stand between two persons, in the ratio of nineteen to seventeen—that, under that plan, the votes of the minority, which may have been designed by the “*People*” to defeat a particular candidate, are totally sunk in the estimate of the vote of the “*State*.” This only proves, Sir, that the minority, in such a case, must submit to the will of a majority. There is some error in this argument, arising from the use of terms. It would, in my opinion, be more correct to say, that the *persons* who compose such a minority, may have failed in their expectation of defeating the sense of the *People*—for the will of the *State* and the will of the *People* of a State, are merely convertible terms, when we speak of the Presidential election. There cannot, in my opinion, Sir, be contrived, by any ingenuity, a scheme which may so effectually defeat, not only the will of the People of the several States, but of the majority of the Union, as the district system. It carries within itself the chances of that result, multiplied in the same proportion that we increase the number of the districts in a State, or their aggregate in the Union. Under the general ticket system, and throwing out of the account the votes derived from Senatorial representation, no person can be elected unless he obtains a majority of the electoral votes, in the gift of the People, voting on the basis of their true constitutional power—

by States. If there is occasionally any inequality under the system of voting by States, like that which the gentleman from South Carolina supposed, in the comparison which he drew between the separate result of the election in New York and Pennsylvania, voting by States, and the result of a vote in those States, if united in one common mass, these inequalities are much more striking, and more highly mischievous, under the district system. It is by this system that the minority of a State may effectually defeat the will of a majority. Let us consider what may be its effect on the vote of New York, in the election of a President, on a division of the popular power of that State into thirty-six electoral districts. Let us suppose that the aggregate of all the surplus majorities, in nineteen of these districts, every one of which are in favor of one person, is fifteen thousand votes; and that the aggregate of these majorities, in the remaining seventeen districts, all of whom are for a different person, amount to twenty thousand. The effect of this system is, in that case, certainly to defeat the will of the People, as a State, and to give to the minority more efficient power, in the election, than the majority. If we trace the consequences of this plan still further, we shall find that it may happen that a single district may give a greater majority, for instance a majority of ten thousand for one person, when the aggregate of majorities in the whole remaining thirty-five may be only five or nine thousand for a different person; and, in such a case, the power of a minority, under the district system, is to that of an actual majority in the State, as thirty-five to one! This effect of the system is by no means problematical. I am not indulging in fanciful theories on its consequences in the States, and its probable tendency to defeat public opinion. Experience has already, in numerous instances, confirmed the truth of these its fatal effects, on the will of the People. The history of many elections in the States which have adopted that plan, if they are examined, must show that such is its tendency. If the general ticket system, on any political hypothesis of the Constitution, occasionally disregards, here and there, in the States, the minority of her votes, the district system, within such a State, directly leads to the still more heretical anomaly of principle, which defeats the will of the majority, or completely paralyzes the power of the State. Such a State may as well at once be struck out of the political system, in the President election. It is a mockery to call for the expression of the will of the People, when the very or-

ganization on which we profess to obtain it fairly, is only calculated to defeat it altogether. Under the general ticket system, the true original principles on which this elective power among the States was adjusted by the Constitution, is completely preserved, and the will of the People of the several States, as States, is strictly regarded, and takes its full effect on the election of the President. Before we adopt any amendment whatever to any part of the Constitution, we must be satisfied that it proposes some valuable improvement to the system. The question before us is not altogether even whether, under the principles on which this power was settled among the States, there may not be some necessary inequality or some incidental inconveniences. It is possible that it can be improved; but we are first to determine whether the plan proposed by the honorable gentleman from South Carolina is a better one, and so adapted in its operation as to remedy these inequalities and inconveniences. Until we are satisfied on that point, I trust we shall not give our assent to it. If the general will of the People of all the States, as a common mass, is the end which it proposes to respect, it is, in my opinion, better calculated to defeat the very object which it professes to attain, with so much certainty.

It is further urged in support of the introduction of this system, that it is adapted to remedy the evils which have sprung up in many of the States from the establishment of what has been commonly called the caucus system—that the necessary consequence of the general ticket plan is to throw the power of the States into the hands of political managers, who wield this elective power for the accomplishment of their own political purposes. Whatever may be the names which we may give to systems of this sort—whether we denominate them as caucusses, or if, as in Pennsylvania, they assume the somewhat less offensive appellation of conventions, I shall not here enter into any particular examination of their merits, nor shall I differ at all from the justice of the views of these systems which have been presented to us, or are to be inferred from the lights in which they were presented by the argument of the honorable gentleman from South Carolina. But, Sir, the true remedy, after all, against the operations of these party systems, is to be found in the stern independence, sagacity, and integrity, of the People. The moral power of this system can only be sustained, after all, by public opinion co-operating with it to the same common end. It may, in some degree, tend to the more perfect organization of



party—its discipline, efficiency, and activity; but it is to be most successfully met by public opinion, and its operations defeated by the independent exercise of the elective power of the People. It is not in the Presidential election alone that it finds the policy which has given it existence in the States; and the district system in that election will not annihilate the party interests which sustain it. New York has adopted the district plan in that election, and yet this system has been there revived—perhaps, with as much efficiency as it ever had. In the choice of electors, I doubt if the district system will provide a complete remedy against the party influence of this political machinery, even at the risque of another evil, the fatal annihilation of the elective power of a State. So long as this party system collects itself at one point, its evils are more fully exposed and accurately judged of. It awakens the jealousy, and keeps alive the vigilance of the People. It then presents a single power, against which the moral energies of a whole State may be directed, and, if crushed in such a contest, it rescues from the general wreck no remnant of the elective power. Diffuse it, and it still operates silently and unseen. The “central power” still keeps in motion in other forms the elements of party organization, and it will still find its way to the remotest corners of a State. So long as it remains concentrated, its power may be subdued; but diffuse it, and it carries its contaminating influence throughout the body politic, tainting the whole system, and corrupting the vitality of our social institutions.

The view which the honorable gentleman presented to us of the effect said to have been produced in Maryland by a few votes on some occasion, from which it was inferred that only ten or a dozen men, composing a surplus majority, produced an entire political revolution in that State, attributes much more to their elective power than they are entitled to. It is not the surplus over a bare majority whose will alone determines any question. These are but the component parts which constitute the whole number of voters which make up the entire mass of the majority. The Constitution was adopted in the Convention of Virginia by only ten votes, and the late declaration of war passed one branch of Congress by a majority of only four or five votes. It can hardly be considered as just to say, that ten men adopted the Constitution of Virginia, and half a dozen only declared the war against Great Britain. This notion was, on that occasion, carried so far, that I well recollect to have

seen or heard of a book written soon after that war commenced, the scope of which was gravely designed to prove the extreme impolicy and absurdity of going to war on the vote of five or six men only! A member of this House, from the State of Pennsylvania, and one of the Representatives from the city of Philadelphia, or its vicinity, was once returned here by a majority of only one vote out of ten or twelve thousand; but we should hardly say, that he was elected by one man, or if we do, we might as well add, that, as he was elected by one person, he was to be considered here as representing that person only.

On the other branch of these amendments, included in the propositions before us, we could have voted more satisfactorily if the resolution itself contained the details which the honorable gentleman suggested in his remarks to be his intention to couple with this part of the amendment. He states that if we should agree to take the ultimate choice of a President from Congress, he proposes to provide for the contingency of a second election, by sending back to the People either the two highest candidates, or the persons having the two highest numbers of votes, (I did not precisely understand which, and it is immaterial to the view which I shall take of the proposition,) for a second choice by the People, voting throughout the States by districts, between such persons only. We must therefore treat this resolution, and this plan, as one proposition, and consider its merits in connection with such a system. The principal argument in favor of taking the election from this House, is founded on the danger that this power may be abused in the hands of the Representatives of the several States, here. This argument directs itself against the existence of all political power, and all institutions of government among men. If the innocent and pure are most liable to fall, by reason of their too confident purity, this power here might be more dangerous still. Now, Sir, to my mind, this species of argument, drawn from the possible abuse of political power in all governments, only proves that it is much better to go back at once to a state of nature, and derive our notions of government from the social institutions (if social they are, in any sense,) of the aborigines in our vicinity. If this argument is received by any one, who is willing to act on the faith of it, it may present to him inducements to abandon civilized society and unite himself to the savage tribes; but it can receive but little favorable consideration any where; when we remember that, in all our forms of government, there are restraints, both moral and political, which entitle all

public bodies to some confidence. The obligations of an oath, and of honor—the power of conscious virtue and the love of one's country are securities which bind men to their integrity every where. If this House is not to be trusted by the People to whom it is directly responsible, and no confidence is to be reposed on our integrity in this point, it deserves but very little on any other. But, Sir, the honorable gentleman has derived much of the force of this argument from the liability of this House to be corrupted by men in power. This illustration is but the same argument, presented in another posture. The one is founded on the innate depravity of the body itself, and the other, from the danger of contamination from evil men. If we indulge in the conclusions which are drawn from these considerations, we may come to the conclusion at last, that the People themselves are not to be trusted in the exercise of their elective rights. If those who are elected directly from the mass of the People are not to be trusted at all, how dangerous might a direct election by the People, of their President, prove to be, on the hypothesis of the honorable gentleman. If this House is so peculiarly liable to be misled or corrupted by men in power, is there nothing to be apprehended among the People, from men out of power? Whatever may be the extent of the influence which men in power may obtain in this House, by "fawning and flattery," there is some reason, in all elective governments, for the People also to be on their guard against the arts of men out of power, who, in the disguise of friends of the People, may flatter their pride, fawn upon their favor, and finally steal away their rights. The evidences of this danger are neither few nor obscure in history. Among all the views, from other times and other countries, which the honorable gentleman drew to his argument, he might have found in the history of every Republic, at least some striking illustrations of this danger. My own reflections on the nature of this government, have led me to a conclusion directly opposite to that of the honorable gentleman. If this government is to be demolished, it will never find the weapons of its destruction in the hands of men in power. The Pretorian bands will never be led up to that fatal work from this House. There are great masses of feeling in different parts of the nation, and common interests which affect great sectional portions of the country, which must be first inflamed and put in motion by those who seek for power—the spirit of anarchy will say to the North, "your commerce is to be annihilat-



ed"—to the South, "your internal security is in danger"—and to the West, "your inheritances are to be taken from you, and your political power is trampled upon"—we may then look among the People for those, who, flattering their prejudices—fomenting their passions—stirring up the deadly elements of party hatred, and exasperating the bitterest feelings of human infirmity, persuade them to consider their public men and statesmen as traitors to their interests, and to treat them as public enemies. Then, sir, we may find, amid the confusion of this tumult of passion and popular phrenzy, tyranny, in its incipient garb, and yet unfledged with power, mounting itself on "young ambition's lowly ladder." If we are really so want to be trusted, and so little disposed to regard public opinion and the rights and will of our constituents, the honorable gentleman might have spared all his labor to convince us of the propriety of this amendment. Experience, and the history of our own country, have not, in my opinion, yet shown, that either the integrity of this House or the country is ever to be corrupted by Executive influence, or made subservient to the will of that Department. During the Presidential term of Washington, and with all the great and well-deserved moral power of his character, the House of Representatives at times feebly supported his general policy in the administration of the government. The administration of his successor closed its term after a very doubtful support by the Legislature, and the first Congress which convened in the next year, reversed most of its public policy by decisive majorities. Mr. Jefferson was elected by the House of Representatives; and if the abstract principles which the honorable gentleman has offered us, as the tests by which we are to be governed in making up our judgment on the conduct of public men, as the motives which guide them in the distribution of patronage, are just, to what a deplorable situation should we reduce the respectability and moral value of that high station in the government of this free country. Can it be believed, on any moral system, that the Executive patronage, in the earlier periods of Mr. Jefferson's administration, or in any part of it, was distributed as the wages of political iniquity? or that the triumphant majorities which supported the general policy of his administration, were maintained by Executive influence? or that the decided support which his successor (who would seem, from the remarks of the honorable gentleman, to have been endowed with political sagacity scarcely competent to select from the country a cabinet)

found during his whole term in both branches of Congress, to all his public measures, was preserved by the power of his personal influence, or even of his patronage? During the next administration, I may appeal to many who are yet here to say, if, during the greatest part of the last eight years, there has been scarcely a time when the whole power of Executive influence could carry any doubtful measure through the House. On many of the most important subjects of general policy, the opinions of this House and the Executive have been essentially variant—and yet I believe that it will be found that a greater number of appointments to public office of members of both branches of Congress, has not happened under any administration. I well recollect that a member of the other branch of the Legislature even accepted, (and, doubtless, solicited,) as a miserable favor from the Executive table, the paltry place of a Collectorship on one of the Northern Lakes. I can never bring my mind or my feelings, as an American, to suffer myself so to judge of our Executives, as to estimate the motives which may actuate them by the hard rules which the gentleman from South Carolina assumes—let them have come to that high station by a constitutional election, under any circumstances whatever. They are tests of such severity that no man can stand the trial. If the Executive appoints his friends to office, 'tis corruption—if he appoints his enemies, 'tis corruption still. If he appoints his friends, he pays—if his enemies, he buys! Are these, Sir, the unsparing judgments which a generous People will pass upon their public men? Are we to cherish, for a moment, the doctrines which lead to such denunciations of all that we are taught, by our national pride, and the character of our institutions, to respect? What should we say of the justice of other nations, should they apply to our free government these bitter reproaches? Let the advocates of the divine rights of monarchy and Kings themselves, when they behold this great fabric of civil liberty, say, in the envy of their hearts,

“How much, O Sun! I hate thy beams”—

but let us never apply to our own public men those judgments which may lead the pettiest Prince of Europe to look down upon the President of this free and enlightened People with contempt. The People of this country will not respond to the sentiments which we have heard. Believe me, Sir, they are too jealous of their own honor, and the reputation of their government, and too generous in their nature, to cherish such injustice to their own institutions, and their own statesmen. If

we invoke these judgments upon those who hold the most eminent stations in the government, by what rule shall we ask them to judge of us? When Mr. Madison called from his retirement in that State which you, Mr. Chairman, have the honor to represent, to the public service of the country, one of her most illustrious citizens and public benefactors, whose name and memory will be revered as long as distinguished talents and eminent public virtue shall be respected and honored any where, was Bayard—purchased? If the living only were involved in these tests of public integrity, we could bear them with more composure—but we must certainly wish that those judgments had been spared, which may inscribe a sentence so revolting to our feelings, on the sanctuary of the dead. When, more recently, one of our most excellent and accomplished men was called from these seats to the service of his country, was Poinsett—bought? If it is honorable to die in the service of one's country, is it disreputable to live in the public confidence, or to serve in its public councils? But I forbear to press these illustrations further. I do not deny that the power of appointment has been abused by some, and may be by all men. But, it is not every exercise of what is somewhat misnamed, when we call it Executive *patronage*, which is to be denounced as a defiling thing, which contaminates all the healthful fountains of public virtue. Is it to become a stigma on the fame of men, that they are called to the service or the councils of their country, even from this House? If the interests of the country are better served, I know not why the path of honorable fame and honorable emulation may not be as pure through this House, as through any other branch of the government, or as it may be any where. But few men have risen to eminence among us, or partaken of the highest confidence of the country, who have not first served her in her elective public councils. Jefferson and Adams, Hamilton and Madison—and Washington—were educated in these schools of political experience. The gentleman from South Carolina told us, with great justice, that in England there has scarcely been a distinguished public man for a century, who has not first been called to the House of Commons by the People of that country—and to this I may add, that, flagrantly corrupt as the gentleman presented that political body to us—as the very purchased vassals of the Crown—these eminent and accomplished statesmen were taken from the Parliament, and called to those exalted stations of the government in that country, on which they have con-



ferred so much honor. As freemen must be educated to liberty (and there is nothing more true) so public men must be educated for public stations. I do not believe in the existence of men as statesmen by instinct. One may be born with some qualities, which may be suitable for other stations. Nature may, for instance, confer upon a man many qualities of a good soldier—but political science is a moral acquirement. To attain those high stations in public confidence, which are so honorable in a free country, it is necessary that one should devote a long life to the study of her laws and institutions—her history—her domestic and foreign relations—the principles of her public policy—the temper of her People—the genius of her political system—and the spirit of her government—nor even then may he expect the People to confer upon him their highest honors, until he has served in their Senates, passed the ordeal of public opinion as a statesman, and shown that he possesses that profound talent, those sound political principles, and great moral qualifications, which alone can adorn her public councils, and perpetuate the civil liberties of the country. It is there that he learns how precious these civil liberties are—it is there that he feels the sanctity of the Constitution—it is there that he draws from experience the lessons of political wisdom, and it is there that he shows his fitness to be trusted with power. When it ceases to be honorable to be here, this House must become a scandal to the nation—a by-word among the People—a reproach to the government—the scoff of monarchy, and a curse to freedom. Why, then, should we treat of it as only corruptible, and judge of it on abstract principles, deduced from the mysteries of political metaphysics, and the “philosophy of human nature?” The illustrations which the honorable gentleman has drawn from the history of Rome, are not at all applicable to this country. I have long ceased to apprehend any danger founded on the existence of those causes here which destroyed that government. It was a Republic (if it now deserves that name,) of a single city—uneducated and unenlightened—of condensed population, and corrupted in morals. There is no just inference to be derived from the history of the infuriated rabble of Rome, who, pinched up by famine, or the fears of it, or dazzled by the glare of military renown, arrayed themselves under the contending chieftains of that city, and were led on by lawless force and blind infatuation, to imbrue their hands in the blood of her best citizens, and to demolish all law, and or-

der, and the government itself. The history of these atrocious times only further shows, that the vassals of Pompey and Cæsar, marshalled in the ranks of these military despots, were at last persuaded to cut each others throats. But, Sir, I trust there are no analogies in this history which we can ever apply to the educated and enlightened population of our own country. Nor is there any more reason to apprehend, in all future time, so long as this government shall stand, and its People shall enjoy the blessings of education, and feel the obligations and influences of religion, that we shall find any moral parallel between the election of a President, and the absurd mockery and lawless violence of a Polish Diet. This Union is not, in my judgment, destined to be severed by any such violences as these. Its dissolution is rather to be expected from the operation of other causes. It can only be accomplished by first impairing the confidence of the People in the integrity of their representatives, and its public councils---in raising up against it the States, by violating their rights, and in combining against the government the moral power of the country. Then, Sir, you will find how weak this political system is without this support from the nation, and it will expire without a struggle. The security for the integrity of this House, is to be found in its responsibility to public opinion. This has, hitherto, proved itself to be an active and vigilant agent, in the political system of these free institutions, and as long as the People are true to their principles and themselves, we may hope that this government will stand. We may long rely, I trust, on their sagacity, independence, and patriotism, for its stability. Whatever fears we may entertain of the evils of the Caucus system, or the integrity of this House in the Presidential election, it is to this tribunal that we must all answer. Postpone the elections in the States until after the Congressional term has expired, and you give this principle its full operation. In the State which I have the honor partly to represent, its power has lately been most signally illustrated. Out of fifteen members who attended the Caucus of 1824, an honorable member, whom I have in my eye, (Mr. CAMBRELENG) is the only spared monument among us, to remind the delegation of the existence of the system. If one of the objects of this amendment is to destroy the operations of any "central power" whatever, by taking the election from the House of Representatives, it is questionable, in my judgment, whether this

end will be effectually accomplished. There is one security, even under the caucus system, whenever the election comes to this House, which mitigates its inconveniences and evils, in other respects. The members here, vote under sacred obligations, which the Constitution respects, as its security for their integrity, and they are responsible to their constituents. But if you take away this security, we may raise up in its place an irresponsible Caucus, which is beyond even the control of public opinion. It will not be a caucus of the members of these Houses. It will become a combination of political adventurers, without doors, who will there organize their schemes of power, and attract to their councils a host of hungry expectants. When the election shall go back to the People a second time, they will be found engaged in poisoning their minds, and rendering the public measures of their Government disreputable in their estimation. They will attack the principles on which public opinion should be founded, and perplex the People with political disquisitions. The master spirits will not be seen in the public eye; and while they and their confederates, in the profoundest conclave, vainly plot the means of successfully storming the highest battlements of the Constitution, which obstruct their path to power—public opinion and the virtue of the People—others shall, as patriots,

“Retreated in a silent valley, sing

“Their own heroic deeds”———

“Others apart, sat on a hill retir’d,

“——— and reason’d high

“Of Providence, foreknowledge, will, and fate,

“And found no end in wandering mazes lost.

\* \* \* \* \*

“Vain reason all, and false philosophy!

“Yet, with a pleasing sorcery, could charm

“Pain, for a while, and anguish—and excite

“Fallacious hope.”—

In all my reflections on the various propositions which have been made, from time to time, to amend the Constitution, in the election of the President, I have come to the conclusion, that the best plan for us is to go back to the original system. Although neither that or the amendment of 1802, can yet be said to have had a fair experiment, yet, if any thing is to be done, it is wisest, in my opinion, to retrace our steps. That plan contained within itself, at least an effectual remedy against the operations of the caucus system. Al-



though no amendment can prevent a systematic preconcert of party, in the election, yet it was in the power of any of the small States, or a few electors—perhaps one—under that arrangement of the elective power, to defeat the election of a particular party candidate, as President. It was a valuable improvement on the pure democratic principle, in that election, and was calculated always to secure, in the two highest stations of the Government, public men of the first grade of character. The small States lost much of their power when they gave up this system. The caucus system received its perfection from that amendment. In relation to the Vice Presidency, it is calculated to operate, in bad times, as a mere bounty of twenty thousand dollars for personal influence. Much as the small States lost by that amendment, the plan now offered by the honorable gentleman from South Carolina, proposes, in effect, to take away from them the only remnant of their power. The amount of political power which they are now to retain, and the benefit which they are to derive from its adoption, is to reduce them to their original electoral votes, under every contingency except the remote chance of a tie in the second election. If they can find an equivalent in districting the large States, for the loss of what they yet retain, they will doubtless be in favor of the amendment. There is, in my opinion, no analogy, as the honorable gentleman stated, between this and the original system. It is indeed true, that two candidates only are to be sent back for the second choice; but the large States are yet to retain, in that event, the whole number of their electoral votes.

The plan of sending back to the People only the two highest candidates, is founded on the assumption, that in case a majority of the People should not unite in the first instance on any person, their second choice must necessarily be for one of the two highest. In this respect, the chance of electing the person whom the People might select in the second election is as much, if not more remote, than under an election by the House on the existing plan, which presents three persons for our choice. It is far from being certain, that in every case, the second preference of the majority of the People would be for one of the two highest. It may happen, that a particular candidate, who might by chance obtain the second, or even the greatest number of votes, might be so obnoxious, that those who voted for the other two out of the three highest, would desire to unite in the second election on the least of the three. We have already had

four persons voted for at the Presidential election, and the number is, perhaps, rather to be generally expected to increase than to diminish. The two highest may, in many elections, have but a comparatively small proportion of the votes which will be very far from a near approximation to a majority. Under the plan now offered, the People may be necessarily coerced themselves to elect a President against their will. There is to be no alternative more congenial to the feelings or wishes of the actual majority, and the scheme in such a case is calculated to defeat public opinion. It has not, in many respects, even the comparative advantages of a choice by plurality in the second election. If it was admitted, out of deference to the argument, that a choice by the House of Representatives, out of the three highest, by a majority of States, would, in many cases, defeat the wishes of the majority of the People, it is not improbable that the plan now offered would much oftener produce that result. It proceeds on the principle, that it is of necessity to be inferred, that a majority would unite on one of the two highest pluralities, and as it sets out on this false hypothesis, it leads in the conclusion to its own refutation, and brings the argument thus founded on unsound abstract principles, directly to the *reductio ad absurdum*. The error lies in the premises, and it is not singular that the deduction should be equally vicious in principle.

But, Sir, I will detain you no longer with my views of the incongruity of the principles on which these propositions rest—the inefficacy of the amendment to accomplish its professed ends, and its impolitic and dangerous disturbance of the rights of the States. I ask of the Committee if the present period is auspicious to the renovation of this compact. When this Constitution was framed, we had been recently chastened by adversity, and the States then deeply felt how great their mutual obligations were, and that they had no interests but to be just. But, circumstances and the times have changed—and we are now in the days of our prosperity. The relative population and power of the States are no longer the same—prejudices, too firmly established, have crept in, and parties have arisen among us. Great sectional interests have sprung up in the States, and a whole nation has been brought into existence beyond the mountains. Public feeling has lately been deeply agitated, and the country is not quiet. I submit it to the dispassionate judgment of this Committee, to say if it is now discreet to agitate this subject. I trust there are no well grounded apprehensions of any immediate danger to the coun-

try. I confess that there have been times when, in the conflicts of party and the convulsions of national feeling, I have too credulously thought that the moral power of this government was too weak to sustain the Union—but experience has shown us that these fears are groundless. Though the collisions of separate and sectional interests may, at times, alarm the most confident, yet, if we examine our history, and consider how well our institutions have maintained our interests abroad, advanced our common national glory, and secured our civil liberties at home; and, if we further look around us and view the sum of national prosperity and individual happiness which is enjoyed throughout our country, there is abundant consolation for our fears; and we may confidently trust, that, under the blessing of Providence, this empire of civil liberty will be perpetual.















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# Speech

OF

Henry R.  
MR. STORRS,

19

ON THE PROPOSITION

*To amend the Constitution of the U. States,*

RESPECTING THE

ELECTION OF PRESIDENT & VICE PRESIDENT.

DELIVERED IN THE HOUSE OF REPRESENTATIVES,

FEBRUARY 17, 1826.

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Washington:

PRINTED BY GALES & SEATON.

1826.





## Speech.

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THE following resolutions being under consideration, in Committee of the Whole—

*Resolved*, That, for the purpose of electing the President and Vice President of the United States, the Constitution ought to be so amended, that a uniform system of voting by districts, shall be established in all the States; and that the Constitution ought to be further amended, in such manner as will prevent the election of the aforesaid officers from devolving upon the respective Houses of Congress.

*Resolved*, That a Select Committee be appointed, with instructions to prepare and report a joint resolution, embracing the aforesaid objects."

Mr. STORRS, of New York, addressed the Committee as follows:

The propositions to amend the Constitution, now before us, which have been submitted by the honorable gentleman from South Carolina, (Mr. McDUFFIE,) are not altogether new to our deliberations. So much of them as proposes to change the present mode of electing the President and Vice President, by establishing within the several States a uniform system of voting by districts, was introduced into this House at the last session of the Sixteenth Congress and finally rejected. The other branch of the amendment which takes the second election from Congress is now for the first time, at least since I have had the honor of a seat here, presented for examination.

It becomes us, Sir, in my humble opinion, to approach this subject with the profoundest reverence for this Constitution, as the work of that illustrious body of patriots and statesmen, who seem to have been raised up by Providence at that peculiarly eventful period, to guide by their eminent wisdom and exalted public virtue, the councils of that convention, the result of whose deliberations was to fix the future destinies of this great empire of freedom. They were men originally highly gifted by nature and deeply versed in political knowledge—they had been educated in the principles of civil liberty, and well understood the temper and genius of their country, its interests and the spirit of its institutions. They justly considered that the Government which was then to be framed was to be adapted to an educated and enlightened country, and to be sustained by moral sentiment and the political virtue and justice of the People. The lights of experience and history which these men followed, were neither "few, faint, or glimmering" in their eyes—and I might, perhaps, with rather more justice than was shown by the honorable gentleman from South Carolina, reverse the opinion which he pronounced on their comparative merits, and say that the most ordinary member of that convention knew more of the true principles of the Constitution than the whole common mass of politicians in our day. The well known encomium recorded in history, which the virtues of this class of men elicited, during the Revolution, from a British Senate, was no

less just and candid than honorable to them, as the testimony of the first statesman of that age and country. They were men who made no extraordinary or officious pretensions to patriotism, but are best known to our generation by their works and the blessings which this great and prosperous nation now enjoys. For sound views of the theory of government, just application of political principles and as the purest models of eloquence, the public papers of the statesmen of our Revolution have never been excelled and will long remain unrivalled.

The times, too, were auspicious to the work before them. The pressure of public calamity had purified the souls of men—the common dangers of the Revolution had bound the country together as brethren of one family—its sufferings had taught them the value of liberty, the necessity of union, and mutual forbearance with each other, and the preciousness of the inheritance which was to descend to us, their children. No selfish passions or unhallowed purposes of ambition tainted the hearts of those who were called to that convention by their countrymen. The wisdom and the works of such men are not to be handled with temerity, and I may surely be permitted to speak for myself, as one of many yet scarcely in the seventh year of an apprenticeship here, when I say that instead of flattering ourselves that we have become wiser than they, we should rather distrust our own political knowledge, as well as our ability to add any substantial or valuable improvement to a system of government, which came from the hands of men who seem to have been moved by the influence of inspiration itself. I trust that on an occasion so serious as this, we shall lay aside all prejudices and feeling, and remember that, when we tread this sacred path, we move on holy ground.

It would have been more satisfactory and we might have formed a better opinion of the operation of the plan which the honorable mover of this amendment intends finally to introduce, had he furnished us at once with all the details of his system. The naked propositions, which alone are involved in the resolutions as they now stand, might then have been entitled, perhaps, to more comparative merit than can be allowed to them as merely insulated principles. They may deserve more or less favor in our judgments, as they may or may not be connected with distributions of the electoral power, which shall preserve more or less of the original political system of the Constitution. As the honorable gentleman has not favored us with any particular details, we must consider these propositions chiefly on the intrinsic merits which they deserve as operating to expunge these particular features of the Constitution—and in this view of their expediency, they propose an entire and radical change of the principles on which the whole structure of the political system of the General Government is founded. The most difficult question which presented itself for adjustment to the Federal Convention, was this distribution of the electoral power in the choice of the Executive. The peculiar difficulties which pressed the convention on this delicate point, were at last overcome and it was finally arranged on principles much more satisfactory than the best



friends of the Constitution, at one time, supposed the form of the confederacy would admit of among them, consistently with the separate sovereignty of the States and the preservation of the just relative influence and interests of each. This part of the plan of the Federal Government was received in the State Conventions with less objection than almost any other. The State Conventions well understood the basis and principles of union on which the Government rested, and in all the discussions which the Constitution produced in these Conventions, it was scarcely denied or questioned by any, that in this particular the plan was the wisest and best which the Convention could have devised to secure the objects of the Union. It can hardly be inferred that those conventions could have mistaken their own views, or that the future operations of this part of the system were not clearly foreseen and well understood.

The structure of this part of the Constitution has also been revised and amended under the administration and influence of many of those who first put the Government into operation. It is well worth our notice, too, that this revision and amendment took place at a period immediately succeeding the contingency which devolved the election of a President on the House of Representatives and when the evils of an election by that body, whatever they may have been, were directly in the view of those who proposed that amendment. It was also a time when the prevailing doctrines were peculiarly auspicious to the success of any fancied improvement which should infuse into the system a larger portion of popular power in the Presidential election, if such an object was more consonant to its original principles. The professed object of the Congress of 1802 was also not so much to change the distribution of the elective power as to give that true constitutional impulse to the system, which was alleged to have departed, in its practical operation, from its primary intention of carrying into effect the will of the majority of the People. Whether this has, in fact, been the only result of the amendment then adopted, it is not material to this part of the discussion to inquire. If, however, it has led to consequences which were not then foreseen, or if feared, not effectually guarded against, we may now be admonished of the dangers which commonly follow every disturbance of the fundamental principles of any settled form of Government, however speciously amendments may be maintained or however highly we may estimate our own foresight. The principles on which the political revolution of 1801 was founded would also have tended powerfully to promote the result which the amendment, now offered to the House, assumes to be so desirable. Those who then came into power out of the political struggles during the previous administration, rested much of their claims to public confidence on their support of the Rights of the People. During the administration of Mr. Jefferson, this confidence secured the political power of the Republican party—and yet, Mr. Chairman, during the whole period of that administration, this amendment of the Constitution, which is now pressed upon us as so clearly indispensable and vital to the system, escaped the attention of the keen-sighted politicians of those days, or if consi-

dered at all, was never presented to the People as an amendment called for by the principles on which their power was established. The dangers of an election by the House of Representatives were then fairly and directly before the Congress and the country; and if it is now so palpable that such an election contains within itself the alarming innate constitutional principles of corruption, of which we have heard so much from the honorable gentleman from South Carolina, it must be somewhat unaccountable and we must reflect upon it with wonder, that the sagacity of the statesmen of Mr. Jefferson's Administration had not detected and reformed this vicious inclination of the system.

Whatever may prove in the final vote of the House, to be the result of this discussion, it is, perhaps, not to be regretted that the propositions now before the committee have been moved. The subject has certainly excited some interest in many of the States and our deliberations here may, perhaps, tend to develop the real effect to be produced by the amendment and place its expediency in public opinion on its true merits, whatever they may be. In the course of the remarks of the honorable gentleman from South Carolina, he was pleased to derive many of his illustrations from the past course of political events in the State which I have the honor, in part, to represent—and I am not disposed to deny that such has been, sometimes, the effect of her domestic dissensions on her true interests and prosperity at home and her just influence in the Union, that many useful lessons may be derived from her experience. The evils which have afflicted that State may chiefly be traced to an arrangement of the power of appointment in her original Constitution, unsuited to the times which followed its adoption, and the great extent of State patronage which has been the necessary consequence of her increase in population and wealth, and the great variety of those political institutions which have resulted from her prosperity. Ferocious systems of politics, demoralizing institutions of party and intolerant proscriptions of virtuous and honorable men have sometimes stained her annals and destroyed her moral power. But, sir, the People there have laid their own reforming hand on their political institutions. Their present Constitution has dispersed the distribution of that enormous accumulation of patronage, which tended to pollute the administration of her Government—the old spirit of party now merely lingers for a while around a miserable remnant of its former idolatry and public men must there be now brought to the standard of unbiassed public opinion and tested by their political virtue.

The honorable gentleman has referred us to a recent event, as an expression of the true sense of the People of that State in favor of a part of the amendment embraced in his resolutions. I shall, certainly, at all times feel the highest respect for the opinions of that People and especially on a mere question of expediency. But, in looking to the late vote of that State in favor of a district system in the Presidential election, I do not find in it that satisfactory evidence of their wishes which I should desire to have

on every question affecting their State interests, before I yield up my own opinion. The census taken nearly a year ago, shows that the State then contained nearly two hundred and seventy-six thousand qualified voters, and I believe that their number is rather underrated when I estimate that at the last November election three hundred thousand electors were entitled to vote on that question. Now, sir, the returns of the vote show, that on that proposition, about two-thirds of the electors of that State expressed no opinion whatever. The whole number of persons who voted both for a general ticket and district system, was only about one-third of the State; and, of this number, only a majority of some six or eight thousand preferred the district system, and the whole vote in favor of the district system was but a comparatively small part, about sixty or seventy thousand out of nearly three hundred thousand electors.

Though, as a general rule, I should not offer here or elsewhere, any other criterion by which we should judge of public sentiment, than the sense of the People expressed in its proper constitutional forms, yet when, on this peculiar subject and occasion, I am referred to such a vote of my own State as evidence of the actual wish of that People, I must be permitted to doubt if there is justly to be derived from it any fair or satisfactory conclusion of the state of public opinion on this matter. This vote is susceptible too, of other explanations, which authorize us to make a very large deduction from the value of the illustration which was drawn from it by the honorable gentleman from South Carolina. The time and circumstances under which this question was presented to the People of that State, were peculiarly unfavorable for eliciting a full and fair expression of public sentiment upon the expediency of the proposition. The course of political events in the State, for some years past, is well known here. In the renovation of her Constitution, they had been lately thrice called to the polls of the election. Scarcely had the agitation of that reformation of her system and the subsequent elections of her State and local officers subsided, and every thing seemed to promise her a long respite, if not lasting repose, from her severe and bitter trials, when an insane Legislature, under the influence of infatuated and desperate party councils, shamelessly bid defiance to the known public will and dared to try their strength against the mighty indignation of an insulted People. They found themselves again called to a new and unexpected contest with corrupt and lawless authority and when the anxious crisis of their moral power arrived, they rose in the strength of freemen, and, breaking the feeble chains of party, overwhelmed the usurpers of their rights in one common and undistinguishable destruction. When, sir, history, faithful to the day in which we live, shall record her annals, the long train of ruins which followed that tempest of popular indignation, shall mark out her path to future times. Having successfully wrested from the Legislature this right so long and unjustly withheld, the People of that State, exhausted in these repeated political conflicts, relapsed from the high excitement of that interesting period and reposed in too confident security. It was in



this state of comparative apathy that a specious and insidious proposition to district that State was presented to them. In this repose, they have been shorn of their strength in the election of the President, and suspicions have prevailed, not founded on slight observation of past events or imperfect judgment of the future, that the tendency of this suicidal policy may chiefly be to paralyze her State power and influence and enable party leaders to bring into market a large share of her electoral votes, who would otherwise despair of success on a general ticket throughout the State.

Before I proceed to the particular merits of the amendments now before us, I will ask the attention of the committee to an examination of some parts of the political structure of the Constitution and the principles on which the elective power, in the choice of the President, was organized. In reforming this system of Government, it is necessary that we should first form for ourselves just views of what these principles really are. It will not answer, on so grave a subject, to assume that they were, or ought to be what we may merely desire them to have been; and then deduce from any hypothesis of our own merely, the expediency of improvements which we propose to engraft upon the system and their consistency with the original principles of the Constitution itself. The honorable gentleman from South Carolina assumed as first principles throughout the whole course of his remarks, that the original adjustment of the electoral power was intended to obtain the sense of a majority of the People of the United States, in the election of the President; and he reasons throughout on the assumption that in this adjustment we find the introduction of the democratic representative principle into the system—that the plan of a district system, which his amendment proposes, is most congenial to the spirit and intention of the Constitution in the operation of the elective power and that the general ticket system tends to subvert and defeat the fair expression of the will of a majority of the People in the election. If these positions (and I have endeavored to state them with precision and fairness) are not sustained by the Constitution, the foundation on which this part of the amendment and the argument for its adoption rests, are unsound in principle—they carry with them no recommendations to our favor or support, and every conclusion which has been drawn from the various views in which the operation of this part of the amendment has been presented to us must be essentially vicious.

I concur in the opinion expressed by the honorable gentleman, that the exercise of the power of choosing the Presidential Electors by the State Legislatures is neither warranted by any fair construction of the Constitution nor the spirit of the system. My opinion, however, of the unconstitutionality of that assumption of power is founded on views of the principles of the Constitution, essentially different from those on which his amendment is founded. I shall have occasion to notice this point in another part of my remarks and will not stop to examine it here.

The first inquiry, then, directly before us, and which must be answered before we can proceed to any illustration of the true charac-

ter and effect this amendment, is, What are the true constitutional principles on which this elective power was adjusted? I dissent entirely, Mr. Chairman, from every fundamental position which the honorable gentleman has assumed and hope to be able to convince this Committee that the amendment cannot be sustained on any principles which can be found in this Constitution.

The great end to be accomplished in the formation of the Constitution was the establishment of a national government which should be adequate to the objects, in which, as one People we had common interests and which at the same time should preserve in the adjustment of the principles of the system, the just influence and power of the several States of the Confederacy. The parties to this compact came together in the character of separate and independent sovereignties. They were *distinct sovereign communities* of People, but in all that related to their external relations and their common security, as well as in much that concerned their domestic and internal prosperity their true and obvious policy was the same. The formation of a common government for any of these purposes, however, was attended with great moral and practical difficulties. The natural situation and advantages of some of the States and the character and habits of the People had led them to look to commerce and navigation as one of the chief sources of their future prosperity. Other causes, combined with some of these, had in some degree established a different policy in other States, more suited to the existing state of their particular interests and social institutions and perhaps more compatible with their safety. They differed greatly from each other in relative power and population and it was foreseen that many causes arising from the peculiar advantages (and especially from the crown lands within their territorial limits,) which some of them possessed, would necessarily increase this disparity in future. In several of the States there existed common political interests peculiar in their character, and closely connected with their internal peace and security—perhaps their very existence—which these States could never safely subject in any degree to the operation of any system not under their own direct and exclusive control. Public opinion, arising in a considerable degree from difference of situation and interests, education and particular habits of thinking, had established in many of the States different notions upon many of the principles which enter into the distribution of political power in representative government—and, although in the great original outlines of that system the Constitutions of the State governments were organized on the same general principles, yet we were not in this as well as in other respects, altogether a homogeneous People. It was a most difficult and delicate matter, calling for all the sagacity, prudence and forbearance as well as political wisdom of the ablest and purest men, to reconcile in any way, and to unite even for the most clearly desirable ends, under one frame of government, the various and distinct, if not in some respects incon-

gruous and repugnant interests of the parties to the Federal Constitution. If the secret history of the Convention shall ever, as it probably will, be fully disclosed, we may perhaps find that at one time its actual dissolution was considered as hardly problematical.

By the then existing systems of government, the security of all these various interests of the several States was confided under their own constitutional forms of government to legislatures immediately responsible to them alone. It was to these bodies that the protection of their civil rights was directly entrusted. The power and resources of the States were in the hands of these legislatures as the immediate guardians of the common political interests of the People who created them. In the formation of a compact between the People of the respective States, which should create a more extended and combined national government and confederated Republic, they were called upon to take from their State Legislatures many of the powers of sovereignty which had been vested in them, and to confer those powers on the Federal Government. In the distribution not only of those powers, but in all those which should be incidentally accessory to the new system, they were most sensibly alive to the security of their separate interests and the preservation of their just relative political influence in that peculiar system which was to be established more or less on the basis of the popular principle of a representation of the People of the several States, as different sovereign communities. In the adjustment of the Executive power of the Union in all its branches, the Convention were met with the full pressure of these various influences. It was natural that the People of a country on which the hand of tyranny had so recently inflicted the most frightful calamities of despotic vengeance, should look to the organization of the elective and executive power with the keenest suspicion and most watchful jealousy. The example of other countries, too, was before them. It was this power which in all Governments was most disposed to strengthen itself, and which, in this, might find its policy in weakening those interests and influences to be here secured by the Constitution to the People of the several States and which might obstruct its path. Experience may indeed have shown in the operation of the Government, that those fears which were entertained when this Constitution was presented to the People for their adoption, were more or less unfounded and that the Executive power is in truth, much weaker than it was theoretically supposed to be. Be that as it may, we are seeking in this discussion to ascertain the true principles on which this power was intended to be adjusted by the framers of the Constitution and the People of the several States who adopted it. It is then, Sir, in my opinion, a compact between the People of the several States with each other of the respective States, as distinct, sovereign, political and primary communities. It is not to be treated as the creature of the State Legislatures. These were not parties, as Legislatures, in any sense, to this compact. The Constitution throughout speaks of the parties to the compact in the character of such distinct State communities. It was to be



ratified by the Conventions of "*the States*." The House of Representatives is composed of members chosen by "*the People*" of the "*several States*." Representation and direct taxes were to be apportioned among the several "*States*." Each "*State*" shall have at least one *Representative*. The Senate shall be composed of two Senators from "*each State*," chosen by the "*Legislature THEREOF*." In the choice of a President by the House of Representatives, the votes shall be taken by "*States*"—the "*Representation* from each State having one vote." The Judicial power shall reach all cases between two or more "*States*," &c. and between "*a State*," or the citizens "*thereof*," and "*foreign States*." The sense in which this term is so obviously used throughout the Constitution, is founded on the principle which I have before stated, and there is not, in my judgment, a single instance in which it has been used in that instrument, which does not fairly admit of that construction which is so much in harmony with the moral and political considerations which entered into the structure of the Government. It is true that the *legislative* power operates *equally* on the People of the several States and their political rights and duties are common—and, so far as the Government, incidentally from its structure and more directly in the system of general legislation conferred on Congress in certain enumerated powers, produces that equality, it must be considered as a national or municipal system and as emanating from the People of the United States as one common mass—and it seems to me that, in this point, the supporters of State rights have commonly mistaken the just foundation of their principles and endeavored to derive from mere rules applicable to the construction of these grants of power, the great principles of security to the rights reserved to the States in this system of government and its operation. This reservation and these securities lie, in my opinion, in very different parts of the system and in none are they more vitally concerned than in the distribution of the electoral power which we are now considering. It is a great error to treat this system as founded on the pure, popular, representative principle (which the amendment professes to adopt) in the structure of any branch of the government. The Senate is established on no such basis. The composition of the Representation of the States in this House is governed by no such rule. There is one interest which goes to make up the relative numerical power of some of the States here, which directly subverts the whole foundation of popular representation in a free government, and the smaller States are secured one Representative at least, on principles which have no necessary connexion with the population of those States. The distribution of the electoral power in the choice of the President by the several States, has been graduated among them by their collective numerical power in this House and the Senate, which carries in it the ingredient of all the federative as well as representative principles which entered into this political system. The compromise which produced this Constitution is illustrated by these views of the subject. The representation in the Senate secured the equal power of the State sove-

reignities (not their Legislatures,) in Congress, and in other respects these sovereignties there hold the exercise of the Executive power, in some degree, under their own control. The slave-holding States retained in their representation in this House an adequate security for that interest, and the compensation, whatever may have since proved to be its value, which the free States received for that concession is also to be found in the same instrument. The deductions which I draw from these first principles of the Constitution, are, that in the election of President, the expression of the will of the *People of the several States, as distinct political communities*, was intended to be preserved inviolably in that election.

The primary object of the exercise of that elective power was not to collect the sense of the People of the United States as one common mass, but as representing the will of separate independent Republics. They, as the *People of the several States*, were the *parties* to the compact and not the State Legislatures. A construction different from this is not in harmony with the nature and analogies of the constitution, and goes to expunge the expression of the public sentiment of the People, as States, totally from the election. The exclusion of the power of the State Legislatures from the choice of the President, must be the necessary political consequence of this view of the system, unless we admit that it may have been the design of the framers of the Constitution to give it an effect which might render the President the mere creature of the State Legislatures, in known hostility to the popular will of the States. It is not an answer to say that the State Legislatures represent the will of the State sovereignties. They do so on all the points of power conferred upon them by the People of the States; but this right of choosing the electors for President is derived from the Constitution of the General Government, and conferred on and fixed in the People themselves. That part of the Constitution which treats of the choice of electors, is, in my opinion, perfectly reconcilable with the principles which I have advanced and cannot fairly receive any other interpretation. The spirit of the compact and structure of the system conform to such an exposition of the terms. It is said, that "Each STATE shall appoint, in such manner as the Legislature THEREOF may direct, a number of electors equal to the whole number of *Senators and Representatives* to which the STATE may be entitled in the Congress." If, by the word State, is here meant, as in other parts of the Constitution, the different communities of People which constitute these bodies politic and the Constitution did not intend a departure, in this particular instance, from that sense, the interpretation of this clause is clear and especially more so, if the popular will was at all times to be preserved as a constituent ingredient in the Presidential election. The absurdity of the consequences to which a contrary construction would lead, is a strong argument to show that this power was never to be left to the State Legislatures. The Constitution has prescribed that Representatives shall be chosen by the persons entitled to vote for the most numerous branch of the State Legislatures; but has not directly fixed the

qualifications of voters for the Presidential election. Under the notion of a broad discretion vested in the State Legislatures, those bodies might devolve the choice of the electors on a different class of citizens, and of other qualifications. Nay, Sir, there can be nothing to prevent them from vesting that power, if they have it, in a board of Bank directors—a turnpike corporation—or a synagogue: The consequences which have flowed from this assumption of power by the State Legislatures and its effect at times on the result of the Presidential election, to say nothing of its frequent abuse, have been well stated by the honorable gentleman from South Carolina. I am not disposed to differ with him in opinion on the course of the Legislature of my own State in this matter. New York has not, however, been the only State in which this power has been assumed by the Legislature. In the State of South Carolina, the People have not exercised this right and the direct expression of the popular will of that State in the election has not been heard since the adoption of the Constitution: I hope, that, when the People of that State come to its full enjoyment, they will not be compelled to receive, as it came to the People of New York, in the humiliating form of a favor that constitutional franchise which South Carolina has been so long entitled to demand as a right.

But, Sir, to return from this digression—the jealousy which the People of these States felt on this point, appears more clearly when we consider this elective right as a *State power* in connection with other somewhat analogous parts of the Constitution. The scrupulous care with which they secured the exercise of this power from the interference of Congress is worth our notice here. The Constitution has provided that the “*times and manner*” of the elections for Senators and Representatives prescribed by the State Legislatures, may be altered by Congress; but the choice of the Presidential electors is taken completely beyond the reach of any interference by the other States, and all power over that subject is entirely withheld from the Congress. In the transfer of the election to the House of Representatives on the occurrence of the contingency which devolves the election on that body, though the numerical power of the large States has been surrendered and the small States in that event receive their equivalent for the loss of their equality in the primary election, yet the same federative principle is preserved in the ballot. “*The representation from each State shall have one vote.*” If, Sir, we examine this Constitution and reflect on the symmetry and harmony of its structure and the complex and seemingly irreconcilable principles on which the political interests of the States were to be united and preserved in the Federative system, and consider only to what degree the prosperity and happiness of this nation has already advanced under its auspicious influence, we are struck with wonder and admiration that it is the work of human wisdom only.

The right of choosing electors in their own way, being thus retained by the States by the original compact of the Constitution,



is to be exercised as they only shall deem best for the preservation of their just political importance in the Union. When the large States consent to surrender it, or suffer themselves to be broken up into fragments under the district system of an amendment which proposes to melt down into one common mass the People of the several States, they have destroyed their strength and will at last find their real interests sacrificed by the operation of this distracting policy. Every step which is taken towards this system approximates to a consolidation, which must finally annihilate their influence in the Confederacy. The amendment of the honorable gentleman from South Carolina strikes at the vitality of their political power and prostrates them at a single blow. Fasten this fatal system upon them by Constitutional authority and the measure can never be retraced. If in the progress of the Government, peculiar natural advantages, the enterprize of the People or any causes whatever have changed the relative power of the free States in the Presidential election, it is not only what was foreseen at the adoption of the Constitution as probable, but they gave in the compact a fair equivalent, and what was then received as satisfactory if not all which was asked. But, it is not the free States alone which are concerned in the consequences which must result from this dismemberment of the power of the States. It is a surrender of the sovereignty of all, and every innovation of principle which disturbs the original adjustment of the power of the States and gives the system an impulse towards an unmixed democracy, secretly undermines their security. The relative ratio of increase in population among the States, has steadily, from the first adoption of the Constitution, advanced in one direction.—Every successive census and apportionment of representation here indicates an approach to that point which may give to the free States two-thirds of the numerical political strength of this House. The State sovereignties now hold this power in check, but every movement which disturbs their stability in this system weakens the foundations of the Government. The State which I have the honor partly to represent, has as deep a stake in the preservation of this Government as the smallest State in the Union. I trust that she will forever feel how closely she is allied to them all in the common interests, the prosperity and the common glory of the nation.

But, sir, if this compact between these States is now to be reformed on a different basis from that on which it was originally established, and it were even desirable to place the elective power in the choice of the President only (without touching any other part of the system) on the principles which the gentleman from South Carolina has urged in support of his amendment, I ask if he is ready to adopt them to their true extent? If it is now expedient to adjust this power on the principles of a purely democratic election, which shall respect the will of an *actual* majority of the People, will he consent that we meet him with his own arguments and conform this compact to his own theory? The operation of the system is confessedly unequal and partial in many respects, and was

originally admitted to be so. But if we are now to expunge those features of this part of the system which produce these inequalities of political power among different portions of the People, why does he not propose at once to establish a popular election within the States and apportion the electoral power equally between them *according to their respective numbers of free citizens*? Will he consent to give up the power which many of the States have retained in this election on other principles? The amendment now before us preserves this inequality still, and so far from being calculated to obtain in the election of the President the will of an actual majority of the People, must operate on principles which may defeat the choice of that majority and yet unite a majority of electoral votes in favor of some one candidate. It appears to me that, in this respect, the amendment does not conform to the principles on which it is supported—and it must undergo at least one essential modification, before it can produce the result which the gentleman from South Carolina deems so important to be attained in the election of the President. The reservation of power which it contains, growing out of the extent of the slave population of the States, is contradictory to the principles on which he so highly recommends it to our favor.

If, then, Sir, I have not mistaken in this discussion the first principles of the Constitution, this part of the amendment before us is incompatible with our system of Government. It has been supported, however, by several considerations growing out of the operation of this elective power, which require some examination before we assent even to its expediency. The gentleman from South Carolina entered into a comparison between the merits of the district and general ticket systems in the United States, and inferred from the views which he presented to us, that the former was to be preferred. He introduced this part of the discussion by stating that whatever might be the rule, it was desirable that it should be uniform in all the States. This, Sir, must depend on the extent to which we may be disposed to apply this principle in the exercise of the elective power, in any constitutional amendment upon which we may finally agree. If uniformity is desirable, (and it may be more or less so in all systems,) it is most consonant to a representative system, to introduce that uniformity of rights which tends most to equality not only in form but in more substantial and important matters. If it is admitted that the elective right is a State power, the mode of choosing electors must be adjusted by their particular views of their own interests and on principles which they themselves think to be most conducive to the security of their just influence in the Presidential election. The People of the several States, having subjected this right to their own regulation, may find much of its value to consist in preserving it under their own control. If perfect equality of political power can be attained in all the States, I am not certain that I should not prefer to adopt the district system: but under the present distribution of the elective power, (which this amendment leaves untouched) there is not to my mind any value in this principle of uniformity but its name, and its introduc-

tion may be adapted to produce very great inequalities in the results of its operation. The comparison which the gentleman drew with great accuracy, between the present operations of the different elective systems adopted in the States of New York and Virginia, presented the results of these diverse adjustments of this State power in a very striking light. It may well happen in so large a State as New York, where no direct common interest or general influence is in active operation, that her electoral vote may be divided between two persons in the ratio of 19 to 17, while in Virginia her undivided strength of 24 votes may be given to one of the candidates, and thus produce the singular result that the effectual power of New York in the election would stand, as the gentleman justly concluded, compared with Virginia, as only 2 to 24. He asked us, "if such injustice could be tolerated?" There is a plain remedy for all this yet within the control of the People of New York, which may preserve to that State her real elective power and by which these States may both stand on principles of uniformity and at the same time preserve also their constitutional equality of right in the election. To correct this possible unequal result by districting the State of Virginia, might virtually annihilate the entire power of both these large States—but if New York should change her present system and adopt the plan of a general ticket, she may resume her proper influence, and both States may retain their respective constitutional power in the Presidential election. Distraction of public opinion is indeed a great evil in any of the States, but the remedy is not to be found in the diffusion of a principle among them all, which necessarily tends to spread that evil with it wider. If the district system is so much more republican in principle and truly democratic in its operation, that the spirit of our Constitution in the adjustment of the power of the States, required its adoption, Pennsylvania, Virginia, and other large States would probably before this time have discovered the political virtue of such a system. One system must indeed be necessarily better than another, as the honorable gentleman from South Carolina justly said. As a general abstract proposition it may be undeniable, if the objects which the several States desire to attain be the same and they have the same interest to cherish, and there exists at the same time no unjust inequality between them. But it is clearly not better that some of the States should risque the effect of an amendment to the Constitution which may jeopard by any change of system those interests, for the preservation of which they became parties to the compact, or destroy the rights which they have reserved to themselves under it.

It is said by the honorable gentleman, that the operation of a general ticket destroys the vote of the minority in a State and that the consequence of that system is virtually to transfer the votes of that minority to a candidate whom they perhaps dislike or abhor. This argument conceals within itself a fatal error in principle. It indirectly assumes, clothe it in what dress we may, that minorities are entitled to representation as well as majorities. If there is any soundness in the position or any foundation for com-



plaint, we must recollect that the same result must happen more or less not only in the district system, but in all elective systems whatever. The only real difference in principle in the two plans before us, is, that the minority on the plan of a general ticket may be much larger than the minority of a mere fragment of a State on the district system: or, we should rather say that such a minority appears larger only because it is a congregation of lesser minorities. But it can never be admitted as a just foundation for any argument whatever in any elective government or system, operating in a large or small State or any where, that the minority have any rights like these. If in the choice of the President the elective power is a *State* power, the general ticket system is founded on sounder elective principles than the district plan; and it is, *a fortiori*, more so if this part of the Constitution was adjusted on the principle assumed by the honorable gentleman, that the object of the Constitution was to obtain the sense of a majority of the People of the United States in that election. The first and only certain mode of obtaining the sense of a majority in a particular State or of the whole People, must necessarily be by a general vote throughout that State or the Union. If a general vote in the Union is not resorted to, the next mode of ascertaining or rather approximating to the will of a majority, would seem to be the distribution of the elective right among the largest masses practicable. It is true that if you divide the entire vote even into two masses only in the election, a single chance is created that the minority may perhaps control (for they might clearly paralyze) the majority. The more you multiply the number of these masses, the further we remove the final result from that which we profess to attain—the will of a majority of the whole Union. To illustrate the principle for which the gentleman contends, he supposes a case might happen, in which by the general ticket system the vote of the State of New York might stand between two persons in the ratio of nineteen to seventeen—that, under that plan, the votes of the minority, which may have been designed by the "*People*" to defeat a particular candidate, are totally sunk in the estimate of the vote of the "*State*." This only proves, Sir, that the minority in such a case must submit to the will of a majority. There is some error in this argument arising from the use of terms. It would, in my opinion, be more correct to say that the *persons* who compose such a minority may have failed in their expectation of defeating the sense of the *People*: for the will of the *State* and the will of the *People* of a State are merely convertible terms when we speak of the Presidential election. There cannot in my opinion, Sir, be contrived by any ingenuity, a scheme which may so effectually defeat not only the will of the People of the several States but of the majority of the Union as the district system. It carries within itself the chances of that result, multiplied in the same proportion that we increase the number of the districts in a State or their aggregate in the Union. Under the general ticket system and throwing out of the account the votes derived from Senatorial representation, no person can be elected unless he ob-

tains a majority of the electoral votes in the gift of the People, voting on the basis of their true constitutional power—by States. If there is occasionally any inequality under the system of voting by States, like that which the gentleman from South Carolina supposed in the comparison which he drew between the separate result of the election in New York and Pennsylvania, voting by States, and the result of a vote in those States if united in one common mass, these inequalities are much more striking and more highly mischievous under the district system. It is by this system that the minority of a State may effectually defeat the will of a majority. Let us consider what may be its effect on the vote of New York in the election of a President, on a division of the popular power of that State into thirty-six electoral districts. Let us suppose that the aggregate of all the surplus majorities in nineteen of these districts, every one of which are in favor of one person, is fifteen thousand votes—and that the aggregate of these majorities in the remaining seventeen districts, all of whom are for a different person, amount to twenty thousand. The effect of this system is in that case, certainly to defeat the will of the People as a State, and to give to the minority more efficient power in the election than the majority. If we trace the consequences of this plan still further, we shall find that it may happen that a single district may give a greater majority, for instance a majority of ten thousand for one person, when the aggregate of majorities in the whole remaining thirty-five may be only five or nine thousand for a different person; and in such a case, the power of a minority under the district system is to that of an actual majority in the State, as thirty-five to one! This effect of the system is by no means problematical. I am not indulging in fanciful theories on its consequences in the States and its probable tendency to defeat public opinion. Experience has already, in numerous instances, confirmed the truth of these its fatal effects on the will of the People. The history of many elections in the States which have adopted that plan, if they are examined, must show that such is its tendency. If the general ticket system, on any political hypothesis of the Constitution, occasionally disregards here and there in the States the minority of her votes, the district system within such a State directly leads to the still more heretical anomaly of principle, which defeats the will of the majority or completely paralyzes the power of the State. Such a State may as well at once be struck out of the political system in the Presidential election. It is a mockery to call for the expression of the will of the People when the very organization on which we profess to obtain it fairly, is only calculated to defeat it altogether. Under the general ticket system, the true original principles on which this elective power among the States was adjusted by the Constitution is completely preserved and the will of the People of the several States, as States, is strictly regarded and takes its full effect on the election of the President. Before we adopt any amendment whatever to any part of the Constitution, we must be satisfied that it proposes some valuable improvement to the system. The question before us is not altogether even whether under the principles on which this power

was settled among the States, there may not be some necessary inequality or some incidental inconveniences. It is possible that it can be improved—but we are first to determine whether the plan proposed by the honorable gentleman from South Carolina is a better one, and so adapted in its operation as to remedy these inequalities and inconveniences. Until we are satisfied on that point, I trust we shall not give our assent to it. If the general will of the People of all the States as a common mass, is the end which it proposes to respect, it is in my opinion, better calculated to defeat the very object which it professes to attain with so much certainty.

It is further urged in support of the introduction of this system, that it is adapted to remedy the evils which have sprung up in many of the States from the establishment of what has been commonly called the caucus system—that the necessary consequence of the general ticket plan is to throw the power of the States into the hands of political managers, who wield this elective power for the accomplishment of their own political purposes. Whatever may be the names which we may give to systems of this sort—whether we denominate them as caucusses or if, as in Pennsylvania, they assume the somewhat less offensive appellation of conventions, I shall not here enter into any particular examination of their merits, nor shall I differ at all from the justice of the views of these systems which have been presented to us or are to be inferred from the lights in which they were presented by the argument of the honorable gentleman from South Carolina. But, Sir, the true remedy after all, against the operations of these party systems is to be found in the stern independence, sagacity and integrity of the People. The moral power of this system can only be sustained by public opinion co-operating with it to the same common end. It may in some degree tend to the more perfect organization of party—its discipline, efficiency and activity; but it is to be most successfully met by public opinion, and its operations defeated by the independent exercise of the elective power of the People. It is not in the Presidential election alone that it finds the policy which has given it existence in the States; and the district system in that election will not annihilate the party interests which sustain it. New York has adopted the district plan in that election and yet this system has been there revived—perhaps, with as much efficiency as it ever had. In the choice of electors, I doubt if the district system will provide a complete remedy against the party influence of this political machinery, even at the risque of another evil, the fatal annihilation of the elective power of a State. So long as this party system collects itself at one point, its evils are more fully exposed and accurately judged of. It awakens the jealousy and keeps alive the vigilance of the People. It then presents a single power, against which the moral energies of a whole State may be directed, and if crushed in such a contest, it rescues from the general wreck no remnant of the elective power. Diffuse it and it still operates silently and unseen. The “central power” still keeps in motion in other forms the elements of party.



organization, and it will still find its way to the remotest corners of a State. So long as it remains concentrated, its power may be subdued; but diffuse it, and it carries its contaminating influence throughout the body politic, tainting the whole system and corrupting the vitality of our social institutions.

The view which the honorable gentleman presented to us of the effect said to have been produced in Maryland by a few votes on some occasion, from which it was inferred that only ten or a dozen men, composing a surplus majority, produced an entire political revolution in that State, attributes much more to their elective power than they are entitled to. It is not the surplus over a bare majority whose will alone determines any question. These are but the component parts which constitute the whole number of voters which make up the entire mass of the majority. The Constitution was adopted in the Convention of Virginia by only ten votes, and the late declaration of war passed one branch of Congress by a majority of only four or five votes. It can hardly be considered as just to say, that ten men adopted the Constitution of Virginia and half a dozen only declared the war against Great Britain. This notion was on that occasion carried so far, that I well recollect to have seen or heard of a book written soon after that war commenced, the scope of which was gravely designed to prove the extreme impolicy and absurdity of going to war on the vote of five or six men only! A member of this House from the State of Pennsylvania, and one of the Representatives from the city of Philadelphia or its vicinity, was once returned here by a majority of only one vote out of ten or twelve thousand; but we should hardly say, that he was elected by one man, or if we do adopt that absurdity, we might as well add that as he was elected by one person, he was to be considered here as representing that person only.

On the other branch of these amendments included in the propositions before us, we could have voted more satisfactorily if the resolution itself contained the details which the honorable gentleman suggested in his remarks to be his intention to couple with this part of the amendment. He states that if we should agree to take the ultimate choice of a President from Congress, he proposes to provide for the contingency of a second election, by sending back to the People either the two highest candidates or the persons having the two highest numbers of votes, (I did not precisely understand which, and it is immaterial to the view which I shall take of the proposition,) for a second choice by the People, voting throughout the States by districts, between such persons only. We must therefore treat this resolution and this plan as one proposition, and consider its merits in connection with such a system. The principal argument in favor of taking the election from this House is founded on the danger that this power may be abused in the hands of the Representatives of the several States here. This argument directs itself against the existence of all political power and all institutions of Government among men. If the innocent and pure are most liable to fall, by reason of their too confident security, this power here might be more dangerous still. Now, Sir, to my mind

this species of argument drawn from the possible abuse of political power in all governments, only proves that it is much better to go back at once to a state of nature and derive our notions of government from the social institutions (if social they are in any sense,) of the aborigines in our vicinity. If this argument is received by any one who is willing to act on the faith of it, it may present to him inducements to abandon civilized society and unite himself to the savage tribes; but it can receive but little favorable consideration any where, when we remember that in all our forms of government, there are restraints, both moral and political, which entitle all public bodies to some confidence. The obligations of an oath and of honor—the power of conscious virtue and the love of one's country are securities which bind men to their integrity every where. If this House is not to be trusted by the People to whom it is directly responsible and no confidence is to be reposed on our integrity in this point, it deserves but very little on any other. But, Sir, the honorable gentleman has derived much of the force of this argument from the liability of this House to be corrupted by men in power. This illustration is but the same argument presented in another posture. The one is founded on the innate depravity of the body itself, and the other on the danger of its contamination from evil men. If we indulge in the conclusions which are drawn from these considerations, we may come to the conclusion at last that the People themselves are not to be trusted in the exercise of their elective rights. If those who are elected directly from the mass of the People are not to be trusted at all, how dangerous might a direct election by the People of their President prove to be, on the hypothesis of the honorable gentleman. If this House is so peculiarly liable to be misled or corrupted by men in power, is there nothing to be apprehended among the People from men out of power? Whatever may be the extent of the influence which men in power may obtain in this House by “fawning and flattery,” there is some reason in all elective governments, for the People also to be on their guard against the arts of men out of power, who in the disguise of friends of the People, may flatter their pride, fawn upon their favor and finally steal away their rights. The evidences of this danger are neither few nor obscure in history. Among all the views from other times and other countries, which the honorable gentleman drew to his argument, he might have found in the history of every Republic at least, some striking illustrations of this danger. My own reflections on the nature of this Government have led me to a conclusion directly opposite to that of the honorable gentleman. If this Government is to be demolished, it will never find the weapons of its destruction in the hands of men in power. The Prætorian bands will never be led up to that fatal work from this House. There are great masses of feeling in different parts of the nation and common interests which affect great sectional portions of the country, which must be first inflamed and put in motion by those who seek for power—the spirit of anarchy will say to the North, “your commerce is to be annihilated”—to the South, “your internal security is in danger”

and to the West, "your inheritances are to be taken from you and your political power is trampled upon"—we may then look among the People for those who, flattering their prejudices—fomenting their passions—stirring up the deadly elements of party hatred and exasperating the bitterest feelings of human infirmity, persuade them to consider their public men and statesmen as traitors to their interests and to treat them as public enemies. Then, Sir, we may find amid the confusion of this tumult of passion and popular phrenzy, tyranny, in its incipient garb and yet unfledged with power, mounting itself on "young ambition's lowly ladder." If we are really so unfit to be trusted and so little disposed to regard public opinion and the rights and will of our constituents, the honorable gentleman might have spared all his labor to convince us of the propriety of this amendment. Experience and the history of our own country have not, in my opinion, yet shown that either the integrity of this House or the country is ever to be corrupted by Executive influence or made subservient to the will of that Department. During the Presidential term of Washington and with all the great and well-deserved moral power of his character, the House of Representatives at times feebly supported his general policy in the administration of the Government. The administration of his successor closed its term after a very doubtful support by the Legislature and the first Congress which convened in the next year, reversed most of its public policy by decisive majorities. Mr. Jefferson was elected by the House of Representatives; and if the abstract principles which the honorable gentleman has offered us as the tests by which we are to be governed in making up our judgment on the conduct of public men and the motives which guide them in the distribution of patronage are just, to what a deplorable situation should we reduce the respectability and moral value of that high station in the Government of this free country. Can it be believed on any moral system, that the Executive patronage in the earlier periods of Mr. Jefferson's administration or in any part of it, was distributed as the wages of political iniquity?—or that the triumphant majorities which supported the general policy of his administration, were maintained by Executive influence?—or that the decided support which his successor (who would seem from the remarks of the honorable gentleman, to have been endowed with political sagacity scarcely competent to select from the country a cabinet) found during his whole term in both branches of Congress to all his public measures, was preserved by the power of his personal influence or even of his patronage? During the next administration, I may appeal to many who are yet here to say, if during the greatest part of the last eight years, there has been scarcely a time when the whole power of Executive influence could carry any favorite measure through the House. On many of the most important subjects of general policy, the opinions of this House and the Executive have been essentially variant—and yet I believe it will be found that a greater number of appointments to public office of members of both branches of Congress, has not happened under any administration. I well recollect that a mem-



ber of the other branch of the Legislature even accepted (and, doubtless, solicited) as a miserable crumb from the Executive table, the paltry place of a collectorship on one of the Northern Lakes. I can never bring my mind or my feelings as an American, to suffer myself so to judge of our Executives as to estimate the motives which may actuate them by the hard rules which the gentleman from South Carolina assumes—let them have come to that high station by a constitutional election under any circumstances whatever. They are tests of such severity that no man can stand the trial. If the Executive appoints his friends to office, 'tis corruption—if he appoints his enemies, 'tis corruption still. If he appoints his friends, he pays—if his enemies, he buys! Are these, Sir, the unsparing judgments which a generous People will pass upon their public men? Are we to cherish for a moment, doctrines which lead to such denunciations of all that we are taught by our national pride and the character of our institutions to respect? What should we say of the justice of other nations, should they apply to our free Government these bitter reproaches? Let the advocates of the divine rights of monarchy and Kings themselves, when they behold this great fabric of civil liberty, say in the envy of their hearts,

“How much, O Sun! I hate thy beams”—

but let us never apply to our public men those judgments which may lead the pettiest Prince of Europe to look down upon the President of this free and enlightened People with contempt. The People of this country will not respond to the sentiments which we have heard. Believe me, Sir, they are too jealous of their own honor and the reputation of their government and too generous in their nature, to cherish such injustice to their own institutions and their own statesmen. If we invoke these judgments upon those who hold the most eminent stations in the government, by what rule shall we ask them to judge of us? When Mr. Madison called from his retirement in that State which you, Mr. Chairman, have the honor to represent, to the public service of the country one of her most illustrious citizens and public benefactors, whose name and memory will be revered as long as distinguished talents and eminent public virtue shall be respected and honored any where, was Bayard—purchased? If the living only were involved in these tests of public integrity, we could bear them with more composure—but we must certainly wish that those judgments had been spared which may inscribe a sentence so revolting to our feelings on the sanctuary of the dead. When more recently, one of our most excellent and accomplished men was called from these seats to the service of his country, was Poinsett—bought? If it is honorable to die in the service of one's country, is it disreputable to live in the public confidence or to serve in its public councils? But I forbear to press these illustrations further. I do not deny that the power of appointment has been abused by some and may be by all men. But it is not every exercise of what is somewhat misnamed when we call it Executive *patronage*, which is to be denounced as a defiling thing which contaminates all the healthful foun-

tains of public virtue. Is it to become a stigma on the fame of men that they are called to the service or the councils of their country even from this House? If the interests of the country are better served, I know not why the path of honorable fame and honorable emulation may not be as pure through this House as through any other branch of the Government, or as it may be any where. But few men have risen to eminence among us or partaken of the highest confidence of the country, who have not first served her in her elective public councils. Jefferson and Adams, Hamilton and Madison—and Washington—were educated in these schools of political experience. The gentleman from South Carolina told us, with great justice, that in England there has scarcely been a distinguished public man for a century who has not first been called to the House of Commons by the People of that country—and to this I may add that, flagrantly corrupt as the gentleman presented that political body to us—as the very purchased vassals of the Crown—these eminent and accomplished statesmen were taken from the Parliament and called to those exalted stations in the government of that country on which they have conferred so much honor. As freemen must be educated to liberty (and there is nothing more true) so public men must be educated for public stations. I do not believe in the existence of men as statesmen by instinct. One may be born with some qualities which may be suitable for other stations. Nature may, for instance, confer upon a man many qualities of a good soldier—but political science is a moral acquirement. To attain those high stations in public confidence which are so honorable in a free country, it is necessary that one should devote a long life to the study of her laws and institutions—her history—her domestic and foreign relations—the principles of her public policy—the temper of her People—the genius of her political system—and the spirit of her government—nor even then may he expect the People to confer upon him their highest honors, until he has served in their Senates, passed the ordeal of public opinion as a statesman and shown that he possesses that profound talent, those sound political principles and great moral qualifications, which alone can adorn her public councils and perpetuate the civil liberties of the country. It is there that he learns how precious these civil liberties are—it is there that he feels the sanctity of the Constitution—it is there that he draws from experience the lessons of political wisdom, and it is there that he shows his fitness to be trusted with power. When it ceases to be honorable to be here, this House must become a scandal to the nation—a by-word among the People—a reproach to the government—the scoff of monarchy, and a curse to freedom. Why, then, should we treat of it as only corruptible and judge of it on abstract principles deduced from the mysteries of political metaphysics and the “philosophy of human nature?” The illustrations which the hon. gentleman has drawn from the history of Rome are not at all applicable to this country. I have long ceased to apprehend any danger founded on the existence of those causes here which de-

stroyed that government. It was a Republic (if it now deserves that name) of a single city—uneducated and unenlightened—of condensed population, and corrupted in morals. Its dissolution only proves that the infuriated rabble of Rome, pinched up by famine or the fear of it, or dazzled by the glare of military renown, arrayed themselves under the contending chieftains of that city and were led on by lawless force and blind infatuation, to imbrue their hands in the blood of her best citizens, and to demolish all law—and order—and the government itself. The history of these atrocious times only further shows that the vassals of Pompey and Cæsar, marshalled in the ranks of these military despots, were at last persuaded to cut each others throats. But, sir, I trust there are no analogies in this history which we can ever apply to the educated and enlightened population of our own country. Nor is there any more reason to apprehend in all future time, so long as this government shall stand and its People shall enjoy the blessings of education and feel the obligations and influences of religion, that we shall find any moral parrallel between the election of a President and the absurd mockery and lawless violence of a Polish Diet. This Union is not, in my judgment, destined to be severed by such violences as these. Its dissolution is rather to be expected from the operation of other causes. It can only be accomplished by first impairing the confidence of the People in the integrity of their Representatives and its public councils—in raising up against it the States by violating their rights and in combining against the Government the moral power of the country. Then, Sir, you will find how weak this political system is without this support from the nation and it will expire without a struggle. The security for the integrity of this House is to be found in its responsibility to public opinion. This has hitherto proved itself to be an active and vigilant agent in the political system of all our free institutions, and as long as the People are true to their principles and themselves, we may hope that this Government will stand. We may long rely, I trust, on their sagacity, independence and patriotism for its stability. Whatever fears we may entertain of the evils of the Caucus system or the integrity of this House in the Presidential election, it is to this tribunal that we must all answer. Postpone the elections in the States until after the Congressional term has expired and you give this principle its full operation. In the State which I have the honor partly to represent, its power has lately been most signally illustrated. Out of fifteen members who attended the Caucus of 1824, an honorable member whom I have in my eye, (Mr. CAMBRELENG) is the only spared monument among us to remind the delegation of the existence of the system. If one of the objects of this amendment is to destroy the operations of any “central power” whatever by taking the election from the House of Representatives it is questionable in my judgment, whether this end will be effectually accomplished. There is one security, even under the Caucus system, whenever the election comes to this House, which mitigates its inconveniences and evils in other re-



spects. The members here vote under sacred obligations, which the Constitution respects as its security for their integrity and they are responsible to their constituents. But if you take away this security we may raise up in its place an irresponsible Caucus, which is beyond even the control of public opinion. It will not be a caucus of the members of these Houses. It will become a combination of political adventurers without doors, who will there organize their schemes of power and attract to their councils a host of hungry expectants. When the election shall go back to the People a second time, they will be found engaged in poisoning their minds and rendering the public measures of their Government disreputable in their estimation. They will attack the principles on which public opinion should be founded and perplex the People with political disquisitions. The master spirits will not be seen in the public eye; and while they and their confederates, in the profoundest conclave, vainly plot the means of successfully storming the highest battlements of the Constitution which obstruct their path to power—public opinion and the virtue of the People—others shall, as patriots,

“Retreated in a silent valley, sing  
 “Their own heroic deeds”———  
 “Others apart, sat on a hill retir’d,  
 “——— and reasoned high  
 “Of Providence, foreknowledge, will, and fate,  
 “And found no end in wandering mazes lost.  
 \* \* \* \* \*  
 “Vain reason all, and false philosophy!  
 “Yet, with a pleasing sorcery, could charm  
 “Pain, for a while, and anguish—and excite  
 “Fallacious hope.”—

In all my reflections on the various propositions which have been made from time to time to amend the Constitution in the election of the President, I have come to the conclusion that the best plan for us is to go back to the original system. Although neither that or the amendment of 1802, can yet be said to have had a fair experiment, yet if any thing is to be done, it is wisest, in my opinion, to retrace our steps. That plan contained within itself at least an effectual remedy against the operations of the caucus system. Although no amendment can prevent a systematic preconcert of party in the election, yet it was in the power of any of the small States or a few electors—perhaps one—under that arrangement of the elective power, to defeat the election of a particular party candidate as President. It was a valuable improvement on the pure democratic principle in that election, and was calculated always to secure in the two highest stations of the Government, public men of the first grade of character. The small States lost much of their power when they gave up this system. The caucus system received its perfection from that amendment. In relation to the Vice Presidency, it is calculated to operate, in bad times, as a mere bounty of twenty thousand dollars for personal influence. Much as the small States lost by that amendment, the plan now offered by the honorable gentleman from South Carolina

proposes in effect to take away from them the only remnant of their power. The amount of political power which they are now to retain and the benefit which they are to derive from its adoption is to reduce them to their original electoral votes under every contingency, except the remote chance of a tie in the second election. If they can find an equivalent in districting the large States, for the loss of what they yet retain, they will doubtless be in favor of the amendment. There is, in my opinion, no analogy, as the honorable gentleman stated, between this and the original system. It is indeed true that two candidates only are to be sent back for the second choice, but the large States are yet to retain in that event the whole number of their electoral votes.

The plan of sending back to the People only the two highest candidates is founded on the assumption that in case a majority of the People should not unite in the first instance on any person, their second choice must necessarily be for one of the two highest. In this respect, the chance of electing the person whom the People might select in the second election is as much, if not more remote than under an election by the House on the existing plan which presents three persons for our choice. It is far from being certain that in every case, the second preference of a majority of the People would be for one of the two highest. It may happen that a particular candidate who might, by chance, obtain the second or even the greatest number of votes might be so obnoxious, that those who voted for the other two out of the three highest, would desire to unite in the second election on the least of the three. We have already had four persons voted for at the Presidential election and the number is perhaps rather to be generally expected to increase than to diminish. The two highest may, in many elections, have but a comparatively small proportion of votes which will be very far from a near approximation to a majority. Under the plan now offered, the People may be necessarily coerced themselves to elect a President against their will. There is to be no alternative more congenial to the feelings or wishes of the actual majority, and the scheme in such a case is calculated to defeat public opinion. It has not in many respects even the comparative advantages of a choice by plurality in the second election. If it was admitted, out of deference to the argument, that a choice by the House of Representatives out of the three highest by a majority of States, would in many cases defeat the wishes of the majority of the People, it is not improbable that the plan now offered would much oftener produce that result. It proceeds on the principle that it is of necessity to be inferred that a majority would unite on one of the two highest pluralities, and as it sets out on this false hypothesis, it leads in the conclusion to its own refutation and brings the argument thus founded on unsound abstract principles directly to the *reductio ad absurdum*. The error lies in the premises and it is not singular that the deduction should be equally vicious in principle.

But, Sir, I will detain you no longer with my views of the incongruity of the principles on which these propositions rest—the

inefficacy of the amendment to accomplish even its professed ends and its impolitic and dangerous disturbance of the rights of the States. I ask of the committee if the present period is auspicious to the renovation of this compact. When this Constitution was framed, we had been recently chastened by adversity and the States then deeply felt how great their mutual obligations were and they had no interest but to be just. But circumstances and the times have changed—and we are now in the days of our prosperity. The relative population and power of the States are no longer the same—prejudices too firmly established, have crept in and parties have arisen among us. Great sectional interests have sprung up in the States and a whole nation has been brought into existence beyond the mountains. Public feeling has lately been deeply agitated and the country is not quiet. I submit it to the dispassionate judgment of this committee to say if it is now discreet to agitate this subject. I trust there are no well-grounded apprehensions of any immediate danger to the country. I confess that there have been times when, in the conflicts of party and the convulsions of national feeling, I have too credulously thought that the moral power of this Government was too weak to sustain the Union—but experience has shown us that these fears are groundless. Though the collisions of separate and sectional interests may at times alarm the most confident, yet if we examine our history and consider how well our institutions have maintained our interests abroad, advanced our common national glory and secured our civil liberties at home—and if we further look around us and view the sum of national prosperity and individual happiness which is enjoyed throughout our country, there is abundant consolation for our fears; and we may confidently trust that, under the blessing of Providence, this empire of civil liberty will be perpetual.





1244-15

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*H. J. Alexander 20*  
**Speech**

*21 in 4425-65*  
**OF**

*Henry R.*  
**MR. STORRS,**

**ON THE PROPOSITION**

*To amend the Constitution of the U. States,*

**RESPECTING THE**

**ELECTION OF PRESIDENT & VICE PRESIDENT.**

**DELIVERED IN THE HOUSE OF REPRESENTATIVES,**

**FEBRUARY 17, 1826.**

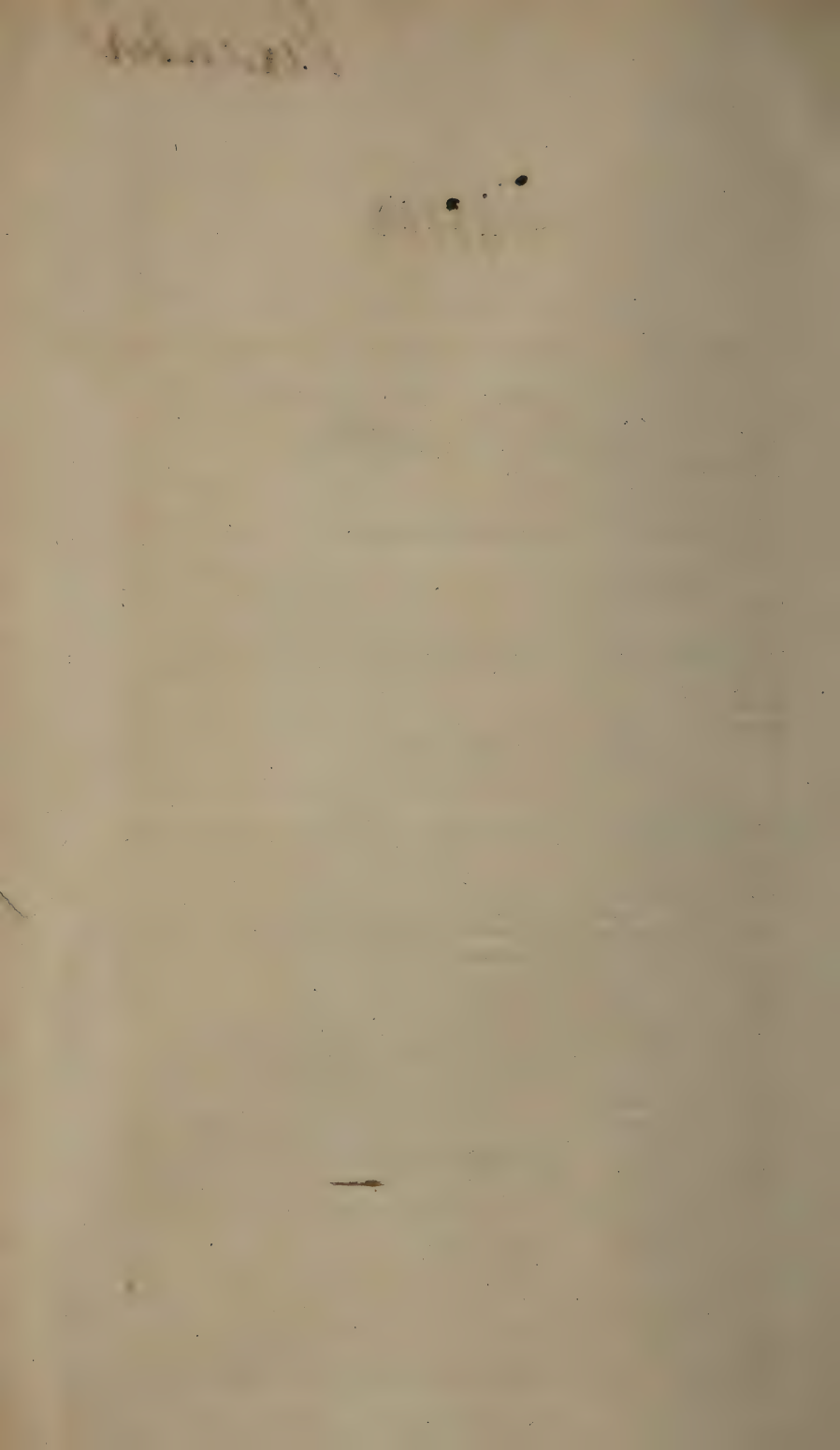
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**Washington:**

**PRINTED BY GALES & SEATON.**

**1826.**





## Speech.

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THE following resolutions being under consideration, in Committee of the Whole—

*Resolved*, That, for the purpose of electing the President and Vice President of the United States, the Constitution ought to be so amended, that a uniform system of voting by districts, shall be established in all the States; and that the Constitution ought to be further amended, in such manner as will prevent the election of the aforesaid officers from devolving upon the respective Houses of Congress.

*Resolved*, That a Select Committee be appointed, with instructions to prepare and report a joint resolution, embracing the aforesaid objects."

Mr. STORRS, of New York, addressed the Committee as follows :

The propositions to amend the Constitution, now before us, which have been submitted by the honorable gentleman from South Carolina, (Mr. McDUFFIE,) are not altogether new to our deliberations. So much of them as proposes to change the present mode of electing the President and Vice President, by establishing within the several States a uniform system of voting by districts, was introduced into this House at the last session of the Sixteenth Congress and finally rejected. The other branch of the amendment which takes the second election from Congress is now for the first time, at least since I have had the honor of a seat here, presented for examination.

It becomes us, Sir, in my humble opinion, to approach this subject with the profoundest reverence for this Constitution, as the work of that illustrious body of patriots and statesmen, who seem to have been raised up by Providence at that peculiarly eventful period, to guide by their eminent wisdom and exalted public virtue, the councils of that convention, the result of whose deliberations was to fix the future destinies of this great empire of freedom. They were men originally highly gifted by nature and deeply versed in political knowledge—they had been educated in the principles of civil liberty, and well understood the temper and genius of their country, its interests and the spirit of its institutions. They justly considered that the Government which was then to be framed was to be adapted to an educated and enlightened country, and to be sustained by moral sentiment and the political virtue and justice of the People. The lights of experience and history which these men followed, were neither "few, faint, or glimmering" in their eyes—and I might, perhaps, with rather more justice than was shown by the honorable gentleman from South Carolina, reverse the opinion which he pronounced on their comparative merits, and say that the most ordinary member of that convention knew more of the true principles of the Constitution than the whole common mass of politicians in our day. The well known encomium recorded in history, which the virtues of this class of men elicited, during the Revolution, from a British Senate, was no

less just and candid than honorable to them, as the testimony of the first statesman of that age and country. They were men who made no extraordinary or officious pretensions to patriotism, but are best known to our generation by their works and the blessings which this great and prosperous nation now enjoys. For sound views of the theory of government, just application of political principles and as the purest models of eloquence, the public papers of the statesmen of our Revolution have never been excelled and will long remain unrivalled.

The times, too, were auspicious to the work before them. The pressure of public calamity had purified the souls of men—the common dangers of the Revolution had bound the country together as brethren of one family—its sufferings had taught them the value of liberty, the necessity of union, and mutual forbearance with each other, and the preciousness of the inheritance which was to descend to us, their children. No selfish passions or unhallowed purposes of ambition tainted the hearts of those who were called to that convention by their countrymen. The wisdom and the works of such men are not to be handled with temerity, and I may surely be permitted to speak for myself, as one of many yet scarcely in the seventh year of an apprenticeship here, when I say that instead of flattering ourselves that we have become wiser than they, we should rather distrust our own political knowledge, as well as our ability to add any substantial or valuable improvement to a system of government, which came from the hands of men who seem to have been moved by the influence of inspiration itself. I trust that on an occasion so serious as this, we shall lay aside all prejudices and feeling, and remember that, when we tread this sacred path, we move on holy ground.

It would have been more satisfactory and we might have formed a better opinion of the operation of the plan which the honorable mover of this amendment intends finally to introduce, had he furnished us at once with all the details of his system. The naked propositions, which alone are involved in the resolutions as they now stand, might then have been entitled, perhaps, to more comparative merit than can be allowed to them as merely insulated principles. They may deserve more or less favor in our judgments, as they may or may not be connected with distributions of the electoral power, which shall preserve more or less of the original political system of the Constitution. As the honorable gentleman has not favored us with any particular details, we must consider these propositions chiefly on the intrinsic merits which they deserve as operating to expunge these particular features of the Constitution—and in this view of their expediency, they propose an entire and radical change of the principles on which the whole structure of the political system of the General Government is founded. The most difficult question which presented itself for adjustment to the Federal Convention, was this distribution of the electoral power in the choice of the Executive. The peculiar difficulties which pressed the convention on this delicate point, were at last overcome and it was finally arranged on principles much more satisfactory than the best



friends of the Constitution, at one time, supposed the form of the confederacy would admit of among them, consistently with the separate sovereignty of the States and the preservation of the just relative influence and interests of each. This part of the plan of the Federal Government was received in the State Conventions with less objection than almost any other. The State Conventions well understood the basis and principles of union on which the Government rested, and in all the discussions which the Constitution produced in these Conventions, it was scarcely denied or questioned by any, that in this particular the plan was the wisest and best which the Convention could have devised to secure the objects of the Union. It can hardly be inferred that those conventions could have mistaken their own views, or that the future operations of this part of the system were not clearly foreseen and well understood.

The structure of this part of the Constitution has also been revised and amended under the administration and influence of many of those who first put the Government into operation. It is well worth our notice, too, that this revision and amendment took place at a period immediately succeeding the contingency which devolved the election of a President on the House of Representatives and when the evils of an election by that body, whatever they may have been, were directly in the view of those who proposed that amendment. It was also a time when the prevailing doctrines were peculiarly auspicious to the success of any fancied improvement which should infuse into the system a larger portion of popular power in the Presidential election, if such an object was more consonant to its original principles. The professed object of the Congress of 1802 was also not so much to change the distribution of the elective power as to give that true constitutional impulse to the system, which was alleged to have departed, in its practical operation, from its primary intention of carrying into effect the will of the majority of the People. Whether this has, in fact, been the only result of the amendment then adopted, it is not material to this part of the discussion to inquire. If, however, it has led to consequences which were not then foreseen, or if feared, not effectually guarded against, we may now be admonished of the dangers which commonly follow every disturbance of the fundamental principles of any settled form of Government, however speciously amendments may be maintained or however highly we may estimate our own foresight. The principles on which the political revolution of 1801 was founded would also have tended powerfully to promote the result which the amendment, now offered to the House, assumes to be so desirable. Those who then came into power out of the political struggles during the previous administration, rested much of their claims to public confidence on their support of the Rights of the People. During the administration of Mr. Jefferson, this confidence secured the political power of the Republican party—and yet, Mr. Chairman, during the whole period of that administration, this amendment of the Constitution, which is now pressed upon us as so clearly indispensable and vital to the system, escaped the attention of the keen-sighted politicians of those days, or if consi-

dered at all, was never presented to the People as an amendment called for by the principles on which their power was established. The dangers of an election by the House of Representatives were then fairly and directly before the Congress and the country; and if it is now so palpable that such an election contains within itself the alarming innate constitutional principles of corruption, of which we have heard so much from the honorable gentleman from South Carolina, it must be somewhat unaccountable and we must reflect upon it with wonder, that the sagacity of the statesmen of Mr. Jefferson's Administration had not detected and reformed this vicious inclination of the system.

Whatever may prove in the final vote of the House, to be the result of this discussion, it is, perhaps, not to be regretted that the propositions now before the committee have been moved. The subject has certainly excited some interest in many of the States and our deliberations here may, perhaps, tend to develop the real effect to be produced by the amendment and place its expediency in public opinion on its true merits, whatever they may be. In the course of the remarks of the honorable gentleman from South Carolina, he was pleased to derive many of his illustrations from the past course of political events in the State which I have the honor, in part, to represent—and I am not disposed to deny that such has been, sometimes, the effect of her domestic dissensions on her true interests and prosperity at home and her just influence in the Union, that many useful lessons may be derived from her experience. The evils which have afflicted that State may chiefly be traced to an arrangement of the power of appointment in her original Constitution, unsuited to the times which followed its adoption, and the great extent of State patronage which has been the necessary consequence of her increase in population and wealth, and the great variety of those political institutions which have resulted from her prosperity. Ferocious systems of politics, demoralizing institutions of party and intolerant proscriptions of virtuous and honorable men have sometimes stained her annals and destroyed her moral power. But, sir, the People there have laid their own reforming hand on their political institutions. Their present Constitution has dispersed the distribution of that enormous accumulation of patronage, which tended to pollute the administration of her Government—the old spirit of party now merely lingers for a while around a miserable remnant of its former idolatry and public men must there be now brought to the standard of unbiassed public opinion and tested by their political virtue.

The honorable gentleman has referred us to a recent event, as an expression of the true sense of the People of that State in favor of a part of the amendment embraced in his resolutions. I shall, certainly, at all times feel the highest respect for the opinions of that People and especially on a mere question of expediency. But, in looking to the late vote of that State in favor of a district system in the Presidential election, I do not find in it that satisfactory evidence of their wishes which I should desire to have

on every question affecting their State interests, before I yield up my own opinion. The census taken nearly a year ago, shows that the State then contained nearly two hundred and seventy-six thousand qualified voters, and I believe that their number is rather underrated when I estimate that at the last November election three hundred thousand electors were entitled to vote on that question. Now, sir, the returns of the vote show, that on that proposition, about two-thirds of the electors of that State expressed no opinion whatever. The whole number of persons who voted both for a general ticket and district system, was only about one-third of the State; and, of this number, only a majority of some six or eight thousand preferred the district system, and the whole vote in favor of the district system was but a comparatively small part, about sixty or seventy thousand out of nearly three hundred thousand electors.

Though, as a general rule, I should not offer here or elsewhere, any other criterion by which we should judge of public sentiment, than the sense of the People expressed in its proper constitutional forms, yet when, on this peculiar subject and occasion, I am referred to such a vote of my own State as evidence of the actual wish of that People, I must be permitted to doubt if there is justly to be derived from it any fair or satisfactory conclusion of the state of public opinion on this matter. This vote is susceptible too, of other explanations, which authorize us to make a very large deduction from the value of the illustration which was drawn from it by the honorable gentleman from South Carolina. The time and circumstances under which this question was presented to the People of that State, were peculiarly unfavorable for eliciting a full and fair expression of public sentiment upon the expediency of the proposition. The course of political events in the State, for some years past, is well known here. In the renovation of her Constitution, they had been lately thrice called to the polls of the election. Scarcely had the agitation of that reformation of her system and the subsequent elections of her State and local officers subsided, and every thing seemed to promise her a long respite, if not lasting repose, from her severe and bitter trials, when an insane Legislature, under the influence of insatuated and desperate party councils, shamelessly bid defiance to the known public will and dared to try their strength against the mighty indignation of an insulted People. They found themselves again called to a new and unexpected contest with corrupt and lawless authority and when the anxious crisis of their moral power arrived, they rose in the strength of freemen, and, breaking the feeble chains of party, overwhelmed the usurpers of their rights in one common and undistinguishable destruction. When, sir, history, faithful to the day in which we live, shall record her annals, the long train of ruins which followed that tempest of popular indignation, shall mark out her path to future times. Having successfully wrested from the Legislature this right so long and unjustly withheld, the People of that State, exhausted in these repeated political conflicts, relapsed from the high excitement of that interesting period and reposed in too confident security. It was in



this state of comparative apathy that a specious and insidious proposition to district that State was presented to them. In this response, they have been shorn of their strength in the election of the President, and suspicions have prevailed, not founded on slight observation of past events or imperfect judgment of the future, that the tendency of this suicidal policy may chiefly be to paralyze her State power and influence and enable party leaders to bring into market a large share of her electoral votes, who would otherwise despair of success on a general ticket throughout the State.

Before I proceed to the particular merits of the amendments now before us, I will ask the attention of the committee to an examination of some parts of the political structure of the Constitution and the principles on which the elective power, in the choice of the President, was organized. In reforming this system of Government, it is necessary that we should first form for ourselves just views of what these principles really are. It will not answer, on so grave a subject, to assume that they were, or ought to be what we may merely desire them to have been; and then deduce from any hypothesis of our own merely, the expediency of improvements which we propose to engraft upon the system and their consistency with the original principles of the Constitution itself. The honorable gentleman from South Carolina assumed as first principles throughout the whole course of his remarks, that the original adjustment of the electoral power was intended to obtain the sense of a majority of the People of the United States, in the election of the President; and he reasons throughout on the assumption that in this adjustment we find the introduction of the democratic representative principle into the system—that the plan of a district system, which his amendment proposes, is most congenial to the spirit and intention of the Constitution in the operation of the elective power and that the general ticket system tends to subvert and defeat the fair expression of the will of a majority of the People in the election. If these positions (and I have endeavored to state them with precision and fairness) are not sustained by the Constitution, the foundation on which this part of the amendment and the argument for its adoption rests, are unsound in principle—they carry with them no recommendations to our favor or support, and every conclusion which has been drawn from the various views in which the operation of this part of the amendment has been presented to us must be essentially vicious.

I concur in the opinion expressed by the honorable gentleman, that the exercise of the power of choosing the Presidential Electors by the State Legislatures is neither warranted by any fair construction of the Constitution nor the spirit of the system. My opinion, however, of the unconstitutionality of that assumption of power is founded on views of the principles of the Constitution, essentially different from those on which his amendment is founded. I shall have occasion to notice this point in another part of my remarks and will not stop to examine it here.

The first inquiry, then, directly before us, and which must be answered before we can proceed to any illustration of the true charac-

ter and effect this amendment, is, What are the true constitutional principles on which this elective power was adjusted? I dissent entirely, Mr. Chairman, from every fundamental position which the honorable gentleman has assumed and hope to be able to convince this Committee that the amendment cannot be sustained on any principles which can be found in this Constitution.

The great end to be accomplished in the formation of the Constitution was the establishment of a national government which should be adequate to the objects, in which, as one People we had common interests and which at the same time should preserve in the adjustment of the principles of the system, the just influence and power of the several States of the Confederacy. The parties to this compact came together in the character of separate and independent sovereignties. They were *distinct sovereign communities* of People, but in all that related to their external relations and their common security, as well as in much that concerned their domestic and internal prosperity their true and obvious policy was the same. The formation of a common government for any of these purposes, however, was attended with great moral and practical difficulties. The natural situation and advantages of some of the States and the character and habits of the People had led them to look to commerce and navigation as one of the chief sources of their future prosperity. Other causes, combined with some of these, had in some degree established a different policy in other States, more suited to the existing state of their particular interests and social institutions and perhaps more compatible with their safety. They differed greatly from each other in relative power and population and it was foreseen that many causes arising from the peculiar advantages (and especially from the crown lands within their territorial limits,) which some of them possessed, would necessarily increase this disparity in future. In several of the States there existed common political interests peculiar in their character, and closely connected with their internal peace and security—perhaps their very existence—which these States could never safely subject in any degree to the operation of any system not under their own direct and exclusive control. Public opinion, arising in a considerable degree from difference of situation and interests, education and particular habits of thinking, had established in many of the States different notions upon many of the principles which enter into the distribution of political power in representative government—and, although in the great original outlines of that system the Constitutions of the State governments were organized on the same general principles, yet we were not in this as well as in other respects, altogether a homogeneous People. It was a most difficult and delicate matter, calling for all the sagacity, prudence and forbearance as well as political wisdom of the ablest and purest men, to reconcile in any way, and to unite even for the most clearly desirable ends, under one frame of government, the various and distinct, if not in some respects incon-

gruous and repugnant interests of the parties to the Federal Constitution. If the secret history of the Convention shall ever, as it probably will, be fully disclosed, we may perhaps find that at one time its actual dissolution was considered as hardly problematical.

By the then existing systems of government, the security of all these various interests of the several States was confided under their own constitutional forms of government to legislatures immediately responsible to them alone. It was to these bodies that the protection of their civil rights was directly entrusted. The power and resources of the States were in the hands of these legislatures as the immediate guardians of the common political interests of the People who created them. In the formation of a compact between the People of the respective States, which should create a more extended and combined national government and confederated Republic, they were called upon to take from their State Legislatures many of the powers of sovereignty which had been vested in them, and to confer those powers on the Federal Government. In the distribution not only of those powers, but in all those which should be incidentally accessory to the new system, they were most sensibly alive to the security of their separate interests and the preservation of their just relative political influence in that peculiar system which was to be established more or less on the basis of the popular principle of a representation of the People of the several States, as different sovereign communities. In the adjustment of the Executive power of the Union in all its branches, the Convention were met with the full pressure of these various influences. It was natural that the People of a country on which the hand of tyranny had so recently inflicted the most frightful calamities of despotic vengeance, should look to the organization of the elective and executive power with the keenest suspicion and most watchful jealousy. The example of other countries, too, was before them. It was this power which in all Governments was most disposed to strengthen itself, and which, in this, might find its policy in weakening those interests and influences to be here secured by the Constitution to the People of the several States and which might obstruct its path. Experience may indeed have shown in the operation of the Government, that those fears which were entertained when this Constitution was presented to the People for their adoption, were more or less unfounded and that the Executive power is in truth, much weaker than it was theoretically supposed to be. Be that as it may, we are seeking in this discussion to ascertain the true principles on which this power was intended to be adjusted by the framers of the Constitution and the People of the several States who adopted it. It is then, Sir, in my opinion, a compact between the People of the several States with each other of the respective States, as distinct, sovereign, political and primary communities. It is not to be treated as the creature of the State Legislatures. These were not parties, as Legislatures, in any sense, to this compact. The Constitution throughout speaks of the parties to the compact in the character of such distinct State communities. It was to be



ratified by the Conventions of "*the States*." The House of Representatives is composed of members chosen by "*the People*" of the "*several States*." Representation and direct taxes were to be apportioned among the several "*States*." Each "*State*" shall have at least one *Representative*. The Senate shall be composed of two Senators from "*each State*," chosen by the "*Legislature THEREOF*." In the choice of a President by the House of Representatives, the votes shall be taken by "*States*"—the "*Representation from each State having one vote*." The Judicial power shall reach all cases between two or more "*States*," &c. and between "*a State*," or the citizens "*thereof*," and "*foreign States*." The sense in which this term is so obviously used throughout the Constitution, is founded on the principle which I have before stated, and there is not, in my judgment, a single instance in which it has been used in that instrument, which does not fairly admit of that construction which is so much in harmony with the moral and political considerations which entered into the structure of the Government. It is true that the *legislative* power operates *equally* on the People of the several States and their political rights and duties are common—and, so far as the Government, incidentally from its structure and more directly in the system of general legislation conferred on Congress in certain enumerated powers, produces that equality, it must be considered as a national or municipal system and as emanating from the People of the United States as one common mass—and it seems to me that, in this point, the supporters of State rights have commonly mistaken the just foundation of their principles and endeavored to derive from mere rules applicable to the construction of these grants of power, the great principles of security to the rights reserved to the States in this system of government and its operation. This reservation and these securities lie, in my opinion, in very different parts of the system and in none are they more vitally concerned than in the distribution of the electoral power which we are now considering. It is a great error to treat this system as founded on the pure, popular, representative principle (which the amendment professes to adopt) in the structure of any branch of the government. The Senate is established on no such basis. The composition of the Representation of the States in this House is governed by no such rule. There is one interest which goes to make up the relative numerical power of some of the States here, which directly subverts the whole foundation of popular representation in a free government, and the smaller States are secured one Representative at least, on principles which have no necessary connexion with the population of those States. The distribution of the electoral power in the choice of the President by the several States, has been graduated among them by their collective numerical power in this House and the Senate, which carries in it the ingredient of all the federative as well as representative principles which entered into this political system. The compromise which produced this Constitution is illustrated by these views of the subject. The representation in the Senate secured the equal power of the State sove-

reignities (not their Legislatures,) in Congress, and in other respects these sovereignties there hold the exercise of the Executive power, in some degree, under their own control. The slave-holding States retained in their representation in this House an adequate security for that interest, and the compensation, whatever may have since proved to be its value, which the free States received for that concession is also to be found in the same instrument. The deductions which I draw from these first principles of the Constitution, are, that in the election of President, the expression of the will of the *People of the several States, as distinct political communities*, was intended to be preserved inviolably in that election.

The primary object of the exercise of that elective power was not to collect the sense of the People of the United States as one common mass, but as representing the will of separate independent Republics. They, as the *People of the several States*, were the *parties* to the compact and not the State Legislatures. A construction different from this is not in harmony with the nature and analogies of the constitution, and goes to expunge the expression of the public sentiment of the People, as States, totally from the election. The exclusion of the power of the State Legislatures from the choice of the President, must be the necessary political consequence of this view of the system, unless we admit that it may have been the design of the framers of the Constitution to give it an effect which might render the President the mere creature of the State Legislatures, in known hostility to the popular will of the States. It is not an answer to say that the State Legislatures represent the will of the State sovereignties. They do so on all the points of power conferred upon them by the People of the States; but this right of choosing the electors for President is derived from the Constitution of the General Government, and conferred on and fixed in the People themselves. That part of the Constitution which treats of the choice of electors, is, in my opinion, perfectly reconcilable with the principles which I have advanced and cannot fairly receive any other interpretation. The spirit of the compact and structure of the system conform to such an exposition of the terms. It is said, that "Each STATE shall appoint, in such manner as the Legislature THEREOF may direct, a number of electors equal to the whole number of *Senators and Representatives* to which the STATE may be entitled in the Congress." If, by the word State, is here meant, as in other parts of the Constitution, the different communities of People which constitute these bodies politic and the Constitution did not intend a departure, in this particular instance, from that sense, the interpretation of this clause is clear and especially more so, if the popular will was at all times to be preserved as a constituent ingredient in the Presidential election. The absurdity of the consequences to which a contrary construction would lead, is a strong argument to show that this power was never to be left to the State Legislatures. The Constitution has prescribed that Representatives shall be chosen by the persons entitled to vote for the most numerous branch of the State Legislatures; but has not directly fixed the

qualifications of voters for the Presidential election. Under the notion of a broad discretion vested in the State Legislatures, those bodies might devolve the choice of the electors on a different class of citizens, and of other qualifications. Nay, Sir, there can be nothing to prevent them from vesting that power, if they have it, in a board of Bank directors—a turnpike corporation—or a synagogue: The consequences which have flowed from this assumption of power by the State Legislatures and its effect at times on the result of the Presidential election, to say nothing of its frequent abuse, have been well stated by the honorable gentleman from South Carolina. I am not disposed to differ with him in opinion on the course of the Legislature of my own State in this matter. New York has not, however, been the only State in which this power has been assumed by the Legislature. In the State of South Carolina, the People have not exercised this right and the direct expression of the popular will of that State in the election has not been heard since the adoption of the Constitution: I hope, that, when the People of that State come to its full enjoyment, they will not be compelled to receive, as it came to the People of New York, in the humiliating form of a favor that constitutional franchise which South Carolina has been so long entitled to demand as a right.

But, Sir, to return from this digression—the jealousy which the People of these States felt on this point, appears more clearly when we consider this elective right as a *State power* in connection with other somewhat analogous parts of the Constitution. The scrupulous care with which they secured the exercise of this power from the interference of Congress is worth our notice here. The Constitution has provided that the “*times and manner*” of the elections for Senators and Representatives prescribed by the State Legislatures, may be altered by Congress; but the choice of the Presidential electors is taken completely beyond the reach of any interference by the other States, and all power over that subject is entirely withheld from the Congress. In the transfer of the election to the House of Representatives on the occurrence of the contingency which devolves the election on that body, though the numerical power of the large States has been surrendered and the small States in that event receive their equivalent for the loss of their equality in the primary election, yet the same federative principle is preserved in the ballot. “*The representation from each State shall have one vote.*” If, Sir, we examine this Constitution and reflect on the symmetry and harmony of its structure and the complex and seemingly irreconcilable principles on which the political interests of the States were to be united and preserved in the Federative system, and consider only to what degree the prosperity and happiness of this nation has already advanced under its auspicious influence, we are struck with wonder and admiration that it is the work of human wisdom only.

The right of choosing electors in their own way, being thus retained by the States by the original compact of the Constitution,



is to be exercised as they only shall deem best for the preservation of their just political importance in the Union. When the large States consent to surrender it, or suffer themselves to be broken up into fragments under the district system of an amendment which proposes to melt down into one common mass the People of the several States, they have destroyed their strength and will at last find their real interests sacrificed by the operation of this distracting policy. Every step which is taken towards this system approximates to a consolidation, which must finally annihilate their influence in the Confederacy. The amendment of the honorable gentleman from South Carolina strikes at the vitality of their political power and prostrates them at a single blow. Fasten this fatal system upon them by Constitutional authority and the measure can never be retraced. If in the progress of the Government, peculiar natural advantages, the enterprize of the People or any causes whatever have changed the relative power of the free States in the Presidential election, it is not only what was foreseen at the adoption of the Constitution as probable, but they gave in the compact a fair equivalent, and what was then received as satisfactory if not all which was asked. But, it is not the free States alone which are concerned in the consequences which must result from this dismemberment of the power of the States. It is a surrender of the sovereignty of all, and every innovation of principle which disturbs the original adjustment of the power of the States and gives the system an impulse towards an unmixed democracy, secretly undermines their security. The relative ratio of increase in population among the States, has steadily, from the first adoption of the Constitution, advanced in one direction.— Every successive census and apportionment of representation here indicates an approach to that point which may give to the free States two-thirds of the numerical political strength of this House. The State sovereignties now hold this power in check, but every movement which disturbs their stability in this system weakens the foundations of the Government. The State which I have the honor partly to represent, has as deep a stake in the preservation of this Government as the smallest State in the Union. I trust that she will forever feel how closely she is allied to them all in the common interests, the prosperity and the common glory of the nation.

But, sir, if this compact between these States is now to be reformed on a different basis from that on which it was originally established, and it were even desirable to place the elective power in the choice of the President only (without touching any other part of the system) on the principles which the gentleman from South Carolina has urged in support of his amendment, I ask if he is ready to adopt them to their true extent? If it is now expedient to adjust this power on the principles of a purely democratic election, which shall respect the will of an *actual* majority of the People, will he consent that we meet him with his own arguments and conform this compact to his own theory? The operation of the system is confessedly unequal and partial in many respects, and was

originally admitted to be so. But if we are now to expunge those features of this part of the system which produce these inequalities of political power among different portions of the People, why does he not propose at once to establish a popular election within the States and apportion the electoral power equally between them *according to their respective numbers of free citizens?* Will he consent to give up the power which many of the States have retained in this election on other principles? The amendment now before us preserves this inequality still, and so far from being calculated to obtain in the election of the President the will of an actual majority of the People, must operate on principles which may defeat the choice of that majority and yet unite a majority of electoral votes in favor of some one candidate. It appears to me that, in this respect, the amendment does not conform to the principles on which it is supported—and it must undergo at least one essential modification, before it can produce the result which the gentleman from South Carolina deems so important to be attained in the election of the President. The reservation of power which it contains, growing out of the extent of the slave population of the States, is contradictory to the principles on which he so highly recommends it to our favor.

If, then, Sir, I have not mistaken in this discussion the first principles of the Constitution, this part of the amendment before us is incompatible with our system of Government. It has been supported, however, by several considerations growing out of the operation of this elective power, which require some examination before we assent even to its expediency. The gentleman from South Carolina entered into a comparison between the merits of the district and general ticket systems in the United States, and inferred from the views which he presented to us, that the former was to be preferred. He introduced this part of the discussion by stating that whatever might be the rule, it was desirable that it should be uniform in all the States. This, Sir, must depend on the extent to which we may be disposed to apply this principle in the exercise of the elective power, in any constitutional amendment upon which we may finally agree. If uniformity is desirable, (and it may be more or less so in all systems,) it is most consonant to a representative system, to introduce that uniformity of rights which tends most to equality not only in form but in more substantial and important matters. If it is admitted that the elective right is a State power, the mode of choosing electors must be adjusted by their particular views of their own interests and on principles which they themselves think to be most conducive to the security of their just influence in the Presidential election. The People of the several States, having subjected this right to their own regulation, may find much of its value to consist in preserving it under their own control. If perfect equality of political power can be attained in all the States, I am not certain that I should not prefer to adopt the district system: but under the present distribution of the elective power, (which this amendment leaves untouched) there is not to my mind any value in this principle of uniformity but its name, and its introduc-

tion may be adapted to produce very great inequalities in the results of its operation. The comparison which the gentleman drew with great accuracy, between the present operations of the different elective systems adopted in the States of New York and Virginia, presented the results of these diverse adjustments of this State power in a very striking light. It may well happen in so large a State as New York, where no direct common interest or general influence is in active operation, that her electoral vote may be divided between two persons in the ratio of 19 to 17, while in Virginia her undivided strength of 24 votes may be given to one of the candidates, and thus produce the singular result that the effectual power of New York in the election would stand, as the gentleman justly concluded, compared with Virginia, as only 2 to 24. He asked us, "if such injustice could be tolerated?" There is a plain remedy for all this yet within the control of the People of New York, which may preserve to that State her real elective power and by which these States may both stand on principles of uniformity and at the same time preserve also their constitutional equality of right in the election. To correct this possible unequal result by districting the State of Virginia, might virtually annihilate the entire power of both these large States—but if New York should change her present system and adopt the plan of a general ticket, she may resume her proper influence, and both States may retain their respective constitutional power in the Presidential election. Distraction of public opinion is indeed a great evil in any of the States, but the remedy is not to be found in the diffusion of a principle among them all, which necessarily tends to spread that evil with it wider. If the district system is so much more republican in principle and truly democratic in its operation, that the spirit of our Constitution in the adjustment of the power of the States, required its adoption, Pennsylvania, Virginia, and other large States would probably before this time have discovered the political virtue of such a system. One system must indeed be necessarily better than another, as the honorable gentleman from South Carolina justly said. As a general abstract proposition it may be undeniable, if the objects which the several States desire to attain be the same and they have the same interest to cherish, and there exists at the same time no unjust inequality between them. But it is clearly not better that some of the States should risk the effect of an amendment to the Constitution which may jeopard by any change of system those interests, for the preservation of which they became parties to the compact, or destroy the rights which they have reserved to themselves under it.

It is said by the honorable gentleman, that the operation of a general ticket destroys the vote of the minority in a State and that the consequence of that system is virtually to transfer the votes of that minority to a candidate whom they perhaps dislike or abhor. This argument conceals within itself a fatal error in principle. It indirectly assumes, clothe it in what dress we may, that minorities are entitled to representation as well as majorities. If there is any soundness in the position or any foundation for com-



plaint, we must recollect that the same result must happen more or less not only in the district system, but in all elective systems whatever. The only real difference in principle in the two plans before us, is, that the minority on the plan of a general ticket may be much larger than the minority of a mere fragment of a State on the district system: or, we should rather say that such a minority appears larger only because it is a congregation of lesser minorities. But it can never be admitted as a just foundation for any argument whatever in any elective government or system, operating in a large or small State or any where, that the minority have any rights like these. If in the choice of the President the elective power is a *State* power, the general ticket system is founded on sounder elective principles than the district plan; and it is, *a fortiori*, more so if this part of the Constitution was adjusted on the principle assumed by the honorable gentleman, that the object of the Constitution was to obtain the sense of a majority of the People of the United States in that election. The first and only certain mode of obtaining the sense of a majority in a particular State or of the whole People, must necessarily be by a general vote throughout that State or the Union. If a general vote in the Union is not resorted to, the next mode of ascertaining or rather approximating to the will of a majority, would seem to be the distribution of the elective right among the largest masses practicable. It is true that if you divide the entire vote even into two masses only in the election, a single chance is created that the minority may perhaps control (for they might clearly paralyze) the majority. The more you multiply the number of these masses, the further we remove the final result from that which we profess to attain—the will of a majority of the whole Union. To illustrate the principle for which the gentleman contends, he supposes a case might happen, in which by the general ticket system the vote of the State of New York might stand between two persons in the ratio of nineteen to seventeen—that, under that plan, the votes of the minority, which may have been designed by the "*People*" to defeat a particular candidate, are totally sunk in the estimate of the vote of the "*State*." This only proves, Sir, that the minority in such a case must submit to the will of a majority. There is some error in this argument arising from the use of terms. It would, in my opinion, be more correct to say that the *persons* who compose such a minority may have failed in their expectation of defeating the sense of the *People*: for the will of the *State* and the will of the *People* of a State are merely convertible terms when we speak of the Presidential election. There cannot in my opinion, Sir, be contrived by any ingenuity, a scheme which may so effectually defeat not only the will of the People of the several States but of the majority of the Union as the district system. It carries within itself the chances of that result, multiplied in the same proportion that we increase the number of the districts in a State or their aggregate in the Union. Under the general ticket system and throwing out of the account the votes derived from Senatorial representation, no person can be elected unless he ob-

tains a majority of the electoral votes in the gift of the People, voting on the basis of their true constitutional power—by States. If there is occasionally any inequality under the system of voting by States, like that which the gentleman from South Carolina supposed in the comparison which he drew between the separate result of the election in New York and Pennsylvania, voting by States, and the result of a vote in those States if united in one common mass, these inequalities are much more striking and more highly mischievous under the district system. It is by this system that the minority of a State may effectually defeat the will of a majority. Let us consider what may be its effect on the vote of New York in the election of a President, on a division of the popular power of that State into thirty-six electoral districts. Let us suppose that the aggregate of all the surplus majorities in nineteen of these districts, every one of which are in favor of one person, is fifteen thousand votes—and that the aggregate of these majorities in the remaining seventeen districts, all of whom are for a different person, amount to twenty thousand. The effect of this system is in that case, certainly to defeat the will of the People as a State, and to give to the minority more efficient power in the election than the majority. If we trace the consequences of this plan still further, we shall find that it may happen that a single district may give a greater majority, for instance a majority of ten thousand for one person, when the aggregate of majorities in the whole remaining thirty-five may be only five or nine thousand for a different person; and in such a case, the power of a minority under the district system is to that of an actual majority in the State, as thirty-five to one! This effect of the system is by no means problematical. I am not indulging in fanciful theories on its consequences in the States and its probable tendency to defeat public opinion. Experience has already, in numerous instances, confirmed the truth of these its fatal effects on the will of the People. The history of many elections in the States which have adopted that plan, if they are examined, must show that such is its tendency. If the general ticket system, on any political hypothesis of the Constitution, occasionally disregards here and there in the States the minority of her votes, the district system within such a State directly leads to the still more heretical anomaly of principle, which defeats the will of the majority or completely paralyzes the power of the State. Such a State may as well at once be struck out of the political system in the Presidential election. It is a mockery to call for the expression of the will of the People when the very organization on which we profess to obtain it fairly, is only calculated to defeat it altogether. Under the general ticket system, the true original principles on which this elective power among the States was adjusted by the Constitution is completely preserved and the will of the People of the several States, as States, is strictly regarded and takes its full effect on the election of the President. Before we adopt any amendment whatever to any part of the Constitution, we must be satisfied that it proposes some valuable improvement to the system. The question before us is not altogether even whether under the principles on which this power

was settled among the States, there may not be some necessary inequality or some incidental inconveniences. It is possible that it can be improved—but we are first to determine whether the plan proposed by the honorable gentleman from South Carolina is a better one, and so adapted in its operation as to remedy these inequalities and inconveniences. Until we are satisfied on that point, I trust we shall not give our assent to it. If the general will of the People of all the States as a common mass, is the end which it proposes to respect, it is in my opinion, better calculated to defeat the very object which it professes to attain with so much certainty.

It is further urged in support of the introduction of this system, that it is adapted to remedy the evils which have sprung up in many of the States from the establishment of what has been commonly called the caucus system—that the necessary consequence of the general ticket plan is to throw the power of the States into the hands of political managers, who wield this elective power for the accomplishment of their own political purposes. Whatever may be the names which we may give to systems of this sort—whether we denominate them as caucuses or if, as in Pennsylvania, they assume the somewhat less offensive appellation of conventions, I shall not here enter into any particular examination of their merits, nor shall I differ at all from the justice of the views of these systems which have been presented to us or are to be inferred from the lights in which they were presented by the argument of the honorable gentleman from South Carolina. But, Sir, the true remedy after all, against the operations of these party systems is to be found in the stern independence, sagacity and integrity of the People. The moral power of this system can only be sustained by public opinion co-operating with it to the same common end. It may in some degree tend to the more perfect organization of party—its discipline, efficiency and activity; but it is to be most successfully met by public opinion, and its operations defeated by the independent exercise of the elective power of the People. It is not in the Presidential election alone that it finds the policy which has given it existence in the States; and the district system in that election will not annihilate the party interests which sustain it. New York has adopted the district plan in that election and yet this system has been there revived—perhaps, with as much efficiency as it ever had. In the choice of electors, I doubt if the district system will provide a complete remedy against the party influence of this political machinery, even at the risque of another evil, the fatal annihilation of the elective power of a State. So long as this party system collects itself at one point, its evils are more fully exposed and accurately judged of. It awakens the jealousy and keeps alive the vigilance of the People. It then presents a single power, against which the moral energies of a whole State may be directed, and if crushed in such a contest, it rescues from the general wreck no remnant of the elective power. Diffuse it and it still operates silently and unseen. The “central power” still keeps in motion in other forms the elements of party



organization, and it will still find its way to the remotest corners of a State. So long as it remains concentrated, its power may be subdued; but diffuse it, and it carries its contaminating influence throughout the body politic, tainting the whole system and corrupting the vitality of our social institutions.

The view which the honorable gentleman presented to us of the effect said to have been produced in Maryland by a few votes on some occasion, from which it was inferred that only ten or a dozen men, composing a surplus majority, produced an entire political revolution in that State, attributes much more to their elective power than they are entitled to. It is not the surplus over a bare majority whose will alone determines any question. These are but the component parts which constitute the whole number of voters which make up the entire mass of the majority. The Constitution was adopted in the Convention of Virginia by only ten votes, and the late declaration of war passed one branch of Congress by a majority of only four or five votes. It can hardly be considered as just to say, that ten men adopted the Constitution of Virginia and half a dozen only declared the war against Great Britain. This notion was on that occasion carried so far, that I well recollect to have seen or heard of a book written soon after that war commenced, the scope of which was gravely designed to prove the extreme impolicy and absurdity of going to war on the vote of five or six men only! A member of this House from the State of Pennsylvania, and one of the Representatives from the city of Philadelphia or its vicinity, was once returned here by a majority of only one vote out of ten or twelve thousand; but we should hardly say, that he was elected by one man, or if we do adopt that absurdity, we might as well add that as he was elected by one person, he was to be considered here as representing that person only.

On the other branch of these amendments included in the propositions before us, we could have voted more satisfactorily if the resolution itself contained the details which the honorable gentleman suggested in his remarks to be his intention to couple with this part of the amendment. He states that if we should agree to take the ultimate choice of a President from Congress, he proposes to provide for the contingency of a second election, by sending back to the People either the two highest candidates or the persons having the two highest numbers of votes, (I did not precisely understand which, and it is immaterial to the view which I shall take of the proposition,) for a second choice by the People, voting throughout the States by districts, between such persons only. We must therefore treat this resolution and this plan as one proposition, and consider its merits in connection with such a system. The principal argument in favor of taking the election from this House is founded on the danger that this power may be abused in the hands of the Representatives of the several States here. This argument directs itself against the existence of all political power and all institutions of Government among men. If the innocent and pure are most liable to fall, by reason of their too confident security, this power here might be more dangerous still. Now, Sir, to my mind

this species of argument drawn from the possible abuse of political power in all governments, only proves that it is much better to go back at once to a state of nature and derive our notions of government from the social institutions (if social they are in any sense,) of the aborigines in our vicinity. If this argument is received by any one who is willing to act on the faith of it, it may present to him inducements to abandon civilized society and unite himself to the savage tribes; but it can receive but little favorable consideration any where, when we remember that in all our forms of government, there are restraints, both moral and political, which entitle all public bodies to some confidence. The obligations of an oath and of honor—the power of conscious virtue and the love of one's country are securities which bind men to their integrity every where. If this House is not to be trusted by the People to whom it is directly responsible and no confidence is to be reposed on our integrity in this point, it deserves but very little on any other. But, Sir, the honorable gentleman has derived much of the force of this argument from the liability of this House to be corrupted by men in power. This illustration is but the same argument presented in another posture. The one is founded on the innate depravity of the body itself, and the other on the danger of its contamination from evil men. If we indulge in the conclusions which are drawn from these considerations, we may come to the conclusion at last that the People themselves are not to be trusted in the exercise of their elective rights. If those who are elected directly from the mass of the People are not to be trusted at all, how dangerous might a direct election by the People of their President prove to be, on the hypothesis of the honorable gentleman. If this House is so peculiarly liable to be misled or corrupted by men in power, is there nothing to be apprehended among the People from men out of power? Whatever may be the extent of the influence which men in power may obtain in this House by “fawning and flattery,” there is some reason in all elective governments, for the People also to be on their guard against the arts of men out of power, who in the disguise of friends of the People, may flatter their pride, fawn upon their favor and finally steal away their rights. The evidences of this danger are neither few nor obscure in history. Among all the views from other times and other countries, which the honorable gentleman drew to his argument, he might have found in the history of every Republic at least, some striking illustrations of this danger. My own reflections on the nature of this Government have led me to a conclusion directly opposite to that of the honorable gentleman. If this Government is to be demolished, it will never find the weapons of its destruction in the hands of men in power. The Prætorian bands will never be led up to that fatal work from this House. There are great masses of feeling in different parts of the nation and common interests which affect great sectional portions of the country, which must be first inflamed and put in motion by those who seek for power—the spirit of anarchy will say to the North, “your commerce is to be annihilated”—to the South, “your internal security is in danger”

—and to the West, “your inheritances are to be taken from you and your political power is trampled upon”—we may then look among the People for those who, flattering their prejudices—fomenting their passions—stirring up the deadly elements of party hatred and exasperating the bitterest feelings of human infirmity, persuade them to consider their public men and statesmen as traitors to their interests and to treat them as public enemies. Then, Sir, we may find amid the confusion of this tumult of passion and popular phrenzy, tyranny, in its incipient garb and yet unfledged with power, mounting itself on “young ambition’s lowly ladder.” If we are really so unfit to be trusted and so little disposed to regard public opinion and the rights and will of our constituents, the honorable gentleman might have spared all his labor to convince us of the propriety of this amendment. Experience and the history of our own country have not, in my opinion, yet shown that either the integrity of this House or the country is ever to be corrupted by Executive influence or made subservient to the will of that Department. During the Presidential term of Washington and with all the great and well-deserved moral power of his character, the House of Representatives at times feebly supported his general policy in the administration of the Government. The administration of his successor closed its term after a very doubtful support by the Legislature and the first Congress which convened in the next year, reversed most of its public policy by decisive majorities. Mr. Jefferson was elected by the House of Representatives; and if the abstract principles which the honorable gentleman has offered us as the tests by which we are to be governed in making up our judgment on the conduct of public men and the motives which guide them in the distribution of patronage are just, to what a deplorable situation should we reduce the respectability and moral value of that high station in the Government of this free country. Can it be believed on any moral system, that the Executive patronage in the earlier periods of Mr. Jefferson’s administration or in any part of it, was distributed as the wages of political iniquity?—or that the triumphant majorities which supported the general policy of his administration, were maintained by Executive influence?—or that the decided support which his successor (who would seem from the remarks of the honorable gentleman, to have been endowed with political sagacity scarcely competent to select from the country a cabinet) found during his whole term in both branches of Congress to all his public measures, was preserved by the power of his personal influence or even of his patronage? During the next administration, I may appeal to many who are yet here to say, if during the greatest part of the last eight years, there has been scarcely a time when the whole power of Executive influence could carry any favorite measure through the House. On many of the most important subjects of general policy, the opinions of this House and the Executive have been essentially variant—and yet I believe it will be found that a greater number of appointments to public office of members of both branches of Congress, has not happened under any administration. I well recollect that a mem-



ber of the other branch of the Legislature even accepted (and, doubtless, solicited) as a miserable crumb from the Executive table, the paltry place of a collectorship on one of the Northern Lakes. I can never bring my mind or my feelings as an American, to suffer myself so to judge of our Executives as to estimate the motives which may actuate them by the hard rules which the gentleman from South Carolina assumes—let them have come to that high station by a constitutional election under any circumstances whatever. They are tests of such severity that no man can stand the trial. If the Executive appoints his friends to office, 'tis corruption—if he appoints his enemies, 'tis corruption still. If he appoints his friends, he pays—if his enemies, he buys! Are these, Sir, the unsparing judgments which a generous People will pass upon their public men? Are we to cherish for a moment, doctrines which lead to such denunciations of all that we are taught by our national pride and the character of our institutions to respect? What should we say of the justice of other nations, should they apply to our free Government these bitter reproaches? Let the advocates of the divine rights of monarchy and Kings themselves, when they behold this great fabric of civil liberty, say in the envy of their hearts,

“How much, O Sun! I hate thy beams”—

but let us never apply to our public men those judgments which may lead the pettiest Prince of Europe to look down upon the President of this free and enlightened People with contempt. The People of this country will not respond to the sentiments which we have heard. Believe me, Sir, they are too jealous of their own honor and the reputation of their government and too generous in their nature, to cherish such injustice to their own institutions and their own statesmen. If we invoke these judgments upon those who hold the most eminent stations in the government, by what rule shall we ask them to judge of us? When Mr. Madison called from his retirement in that State which you, Mr. Chairman, have the honor to represent, to the public service of the country one of her most illustrious citizens and public benefactors, whose name and memory will be revered as long as distinguished talents and eminent public virtue shall be respected and honored any where, was Bayard—purchased? If the living only were involved in these tests of public integrity, we could bear them with more composure—but we must certainly wish that those judgments had been spared which may inscribe a sentence so revolting to our feelings on the sanctuary of the dead. When more recently, one of our most excellent and accomplished men was called from these seats to the service of his country, was Poinsett—bought? If it is honorable to die in the service of one's country, is it disreputable to live in the public confidence or to serve in its public councils? But I forbear to press these illustrations further. I do not deny that the power of appointment has been abused by some and may be by all men. But it is not every exercise of what is somewhat misnamed when we call it Executive *patronage*, which is to be denounced as a defiling thing which contaminates all the healthful foun-

tains of public virtue. Is it to become a stigma on the fame of men that they are called to the service or the councils of their country even from this House? If the interests of the country are better served, I know not why the path of honorable fame and honorable emulation may not be as pure through this House as through any other branch of the Government, or as it may be any where. But few men have risen to eminence among us or partaken of the highest confidence of the country, who have not first served her in her elective public councils. Jefferson and Adams, Hamilton and Madison—and Washington—were educated in these schools of political experience. The gentleman from South Carolina told us, with great justice, that in England there has scarcely been a distinguished public man for a century who has not first been called to the House of Commons by the People of that country—and to this I may add that, flagrantly corrupt as the gentleman presented that political body to us—as the very purchased vassals of the Crown—these eminent and accomplished statesmen were taken from the Parliament and called to those exalted stations in the government of that country on which they have conferred so much honor. As freemen must be educated to liberty (and there is nothing more true) so public men must be educated for public stations. I do not believe in the existence of men as statesmen by instinct. One may be born with some qualities which may be suitable for other stations. Nature may, for instance, confer upon a man many qualities of a good soldier—but political science is a moral acquirement. To attain those high stations in public confidence which are so honorable in a free country, it is necessary that one should devote a long life to the study of her laws and institutions—her history—her domestic and foreign relations—the principles of her public policy—the temper of her People—the genius of her political system—and the spirit of her government—nor even then may he expect the People to confer upon him their highest honors, until he has served in their Senates, passed the ordeal of public opinion as a statesman and shown that he possesses that profound talent, those sound political principles and great moral qualifications, which alone can adorn her public councils and perpetuate the civil liberties of the country. It is there that he learns how precious these civil liberties are—it is there that he feels the sanctity of the Constitution—it is there that he draws from experience the lessons of political wisdom, and it is there that he shows his fitness to be trusted with power. When it ceases to be honorable to be here, this House must become a scandal to the nation—a by-word among the People—a reproach to the government—the scoff of monarchy, and a curse to freedom. Why, then, should we treat of it as only corruptible and judge of it on abstract principles deduced from the mysteries of political metaphysics and the “philosophy of human nature?” The illustrations which the gentleman has drawn from the history of Rome are not at all applicable to this country. I have long ceased to apprehend any danger founded on the existence of those causes here which de-

stroyed that government. It was a Republic (if it now deserves that name) of a single city—uneducated and unenlightened—of condensed population, and corrupted in morals. Its dissolution only proves that the infuriated rabble of Rome, pinched up by famine or the fear of it, or dazzled by the glare of military renown, arrayed themselves under the contending chieftains of that city and were led on by lawless force and blind infatuation, to imbrue their hands in the blood of her best citizens, and to demolish all law—and order—and the government itself. The history of these atrocious times only further shows that the vassals of Pompey and Cæsar, marshalled in the ranks of these military despots, were at last persuaded to cut each others throats. But, sir, I trust there are no analogies in this history which we can ever apply to the educated and enlightened population of our own country. Nor is there any more reason to apprehend in all future time, so long as this government shall stand and its People shall enjoy the blessings of education and feel the obligations and influences of religion, that we shall find any moral parrallel between the election of a President and the absurd mockery and lawless violence of a Polish Diet. This Union is not, in my judgment, destined to be severed by such violences as these. Its dissolution is rather to be expected from the operation of other causes. It can only be accomplished by first impairing the confidence of the People in the integrity of their Representatives and its public councils—in raising up against it the States by violating their rights and in combining against the Government the moral power of the country. Then, Sir, you will find how weak this political system is without this support from the nation and it will expire without a struggle. The security for the integrity of this House is to be found in its responsibility to public opinion. This has hitherto proved itself to be an active and vigilant agent in the political system of all our free institutions, and as long as the People are true to their principles and themselves, we may hope that this Government will stand. We may long rely, I trust, on their sagacity, independence and patriotism for its stability. Whatever fears we may entertain of the evils of the Caucus system or the integrity of this House in the Presidential election, it is to this tribunal that we must all answer. Postpone the elections in the States until after the Congressional term has expired and you give this principle its full operation. In the State which I have the honor partly to represent, its power has lately been most signally illustrated. Out of fifteen members who attended the Caucus of 1824, an honorable member whom I have in my eye, (Mr. CAMBRELENG) is the only spared monument among us to remind the delegation of the existence of the system. If one of the objects of this amendment is to destroy the operations of any "central power" whatever by taking the election from the House of Representatives it is questionable in my judgment, whether this end will be effectually accomplished. There is one security, even under the Caucus system, whenever the election comes to this House, which mitigates its inconveniences and evils in other re-



spects. The members here vote under sacred obligations, which the Constitution respects as its security for their integrity and they are responsible to their constituents. But if you take away this security, we may raise up in its place an irresponsible Caucus, which is beyond even the control of public opinion. It will not be a caucus of the members of these Houses. It will become a combination of political adventurers without doors, who will there organize their schemes of power and attract to their councils a host of hungry expectants. When the election shall go back to the People a second time, they will be found engaged in poisoning their minds and rendering the public measures of their Government disreputable in their estimation. They will attack the principles on which public opinion should be founded and perplex the People with political disquisitions. The master spirits will not be seen in the public eye; and while they and their confederates, in the profoundest conclave, vainly plot the means of successfully storming the highest battlements of the Constitution which obstruct their path to power—public opinion and the virtue of the People—others shall, as patriots,

“Retreated in a silent valley, sing  
 “Their own heroic deeds”———  
 “Others apart, sat on a hill retir’d,  
 “——— and reasoned high  
 “Of Providence, foreknowledge, will, and fate,  
 “And found no end in wandering mazes lost.  
 \* \* \* \* \*  
 “Vain reason all, and false philosophy !  
 “Yet, with a pleasing sorcery, could charm  
 “Pain, for a while, and anguish—and excite  
 “Fallacious hope.”—

In all my reflections on the various propositions which have been made from time to time to amend the Constitution in the election of the President, I have come to the conclusion that the best plan for us is to go back to the original system. Although neither that or the amendment of 1802, can yet be said to have had a fair experiment, yet if any thing is to be done, it is wisest, in my opinion, to retrace our steps. That plan contained within itself at least an effectual remedy against the operations of the caucus system. Although no amendment can prevent a systematic preconcert of party in the election, yet it was in the power of any of the small States or a few electors—perhaps one—under that arrangement of the elective power, to defeat the election of a particular party candidate as President. It was a valuable improvement on the pure democratic principle in that election, and was calculated always to secure in the two highest stations of the Government, public men of the first grade of character. The small States lost much of their power when they gave up this system. The caucus system received its perfection from that amendment. In relation to the Vice Presidency, it is calculated to operate, in bad times, as a mere bounty of twenty thousand dollars for personal influence. Much as the small States lost by that amendment, the plan now offered by the honorable gentleman from South Carolina

proposes in effect to take away from them the only remnant of their power. The amount of political power which they are now to retain and the benefit which they are to derive from its adoption is to reduce them to their original electoral votes under every contingency, except the remote chance of a tie in the second election. If they can find an equivalent in districting the large States, for the loss of what they yet retain, they will doubtless be in favor of the amendment. There is, in my opinion, no analogy, as the honorable gentleman stated, between this and the original system. It is indeed true that two candidates only are to be sent back for the second choice, but the large States are yet to retain in that event the whole number of their electoral votes.

The plan of sending back to the People only the two highest candidates is founded on the assumption that in case a majority of the People should not unite in the first instance on any person, their second choice must necessarily be for one of the two highest. In this respect, the chance of electing the person whom the People might select in the second election is as much, if not more remote than under an election by the House on the existing plan which presents three persons for our choice. It is far from being certain that in every case, the second preference of a majority of the People would be for one of the two highest. It may happen that a particular candidate who might, by chance, obtain the second or even the greatest number of votes might be so obnoxious, that those who voted for the other two out of the three highest, would desire to unite in the second election on the least of the three. We have already had four persons voted for at the Presidential election and the number is perhaps rather to be generally expected to increase than to diminish. The two highest may, in many elections, have but a comparatively small proportion of votes which will be very far from a near approximation to a majority. Under the plan now offered, the People may be necessarily coerced themselves to elect a President against their will. There is to be no alternative more congenial to the feelings or wishes of the actual majority, and the scheme in such a case is calculated to defeat public opinion. It has not in many respects even the comparative advantages of a choice by plurality in the second election. If it was admitted, out of deference to the argument, that a choice by the House of Representatives out of the three highest by a majority of States, would in many cases defeat the wishes of the majority of the People, it is not improbable that the plan now offered would much oftener produce that result. It proceeds on the principle that it is of necessity to be inferred that a majority would unite on one of the two highest pluralities, and as it sets out on this false hypothesis, it leads in the conclusion to its own refutation and brings the argument thus founded on unsound abstract principles directly to the *reductio ad absurdum*. The error lies in the premises and it is not singular that the deduction should be equally vicious in principle.

But, Sir, I will detain you no longer with my views of the incongruity of the principles on which these propositions rest—the

inefficacy of the amendment to accomplish even its professed ends and its impolitic and dangerous disturbance of the rights of the States. I ask of the committee if the present period is auspicious to the renovation of this compact. When this Constitution was framed, we had been recently chastened by adversity and the States then deeply felt how great their mutual obligations were and they had no interest but to be just. But circumstances and the times have changed—and we are now in the days of our prosperity. The relative population and power of the States are no longer the same—prejudices too firmly established, have crept in and parties have arisen among us. Great sectional interests have sprung up in the States and a whole nation has been brought into existence beyond the mountains. Public feeling has lately been deeply agitated and the country is not quiet. I submit it to the dispassionate judgment of this committee to say if it is now discreet to agitate this subject. I trust there are no well-grounded apprehensions of any immediate danger to the country. I confess that there have been times when, in the conflicts of party and the convulsions of national feeling, I have too credulously thought that the moral power of this Government was too weak to sustain the Union—but experience has shown us that these fears are groundless. Though the collisions of separate and sectional interests may at times alarm the most confident, yet if we examine our history and consider how well our institutions have maintained our interests abroad, advanced our common national glory and secured our civil liberties at home—and if we further look around us and view the sum of national prosperity and individual happiness which is enjoyed throughout our country, there is abundant consolation for our fears; and we may confidently trust that, under the blessing of Providence, this empire of civil liberty will be perpetual.







21

**SPEECH**

OF

*James*  
**MR. STRONG, OF NEW YORK,**

**ON THE BILL TO AMEND**

**THE NAVIGATION LAWS**

OF

**THE UNITED STATES.**

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DELIVERED IN THE HOUSE OF REPRESENTATIVES,  
MAY 11 AND 13, 1830.

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WASHINGTON :

PRINTED BY GALES & SEATON.

1830.



Wm. Crockett, Esq. Aug. 7. 1867.

1867

## SPEECH.

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MR. STRONG'S Speech on the Bill "to amend the Navigation Laws of the United States," in the House of Representatives, May 11-13, 1830.

MR. STRONG said, the extraordinary character of this bill would, he thought, justify him in submitting some remarks upon its mischievous and ruinous operation upon the agricultural as well as upon the manufacturing and navigating interests of the country. Its provisions, unless I totally misapprehend them, said Mr. S. are utterly hostile to the whole principle of protection. The honorable Chairman of the committee, [Mr. CAMBRELENG,] by this novel bill, would remove the old safeguards, and leave our farms, factories, and ships almost wholly unprotected; would take away the superintending power of this House over the capital and industry of the country, and give it partly to foreign Governments, but mainly to the Executive of the United States. This will be a pledge to foreign nations which we cannot recal, and a power to the President of the United States which we cannot control. I can never agree to this. We may as well, and with more safety, give up to the President the power of declaring war. The high responsibility of protecting the skill, the labor, and the property of our constituents is here on us—and on us let it rest.

But, before I go into an examination of the bill and its bearing on the great interests of the country, I must occupy a little time in reply to the honorable gentleman from Georgia [Mr. WAYNE.] So far as I understood him, his main object was to shew that our tariff laws are exceedingly oppressive to the Southern States, and to all parts of the Union; that this bill, should it become a law, would open foreign ports to us, and thereby give us steady foreign markets for our breadstuffs and provisions; and, in a word, for all the raw productions of our common country; and that, consequently, the agricultural interest of the nation, and especially the cotton, tobacco, and sugar planters of the South would be relieved.

The tariff laws have become, in the hands of their enemies, a ready weapon for every species of warfare ! Formerly, the objection to them was, that they favored the rich and oppressed the poor ; that they taxed the industry of the poor man to protect the money of the rich man. But now the objection is, that they favor mechanics and laborers, and oppress the rich farmers and planters ; that now they tax the wealthy and the rich to protect the skill and industry of the laboring poor.

What, sir, is the principle of the tariff laws, of this " American System " so much reviled because so little understood ? It is the adequate protection of our capital, that is, of the produce of our labor and skill, whether this produce be in the shape of money, houses, factories, cloths, or ships ; or of cotton, sugar, or tobacco, not only against the ruinous competition of foreign capital, but against the action of foreign legislation.

The protective system rests upon the same principle as the other great national and constitutional means of defence. Both are for protection. The Navy, Army, and Fortifications, are for the protection of persons and property, against open enemies ; whereas, the tariff laws (even as revenue laws) are for the protection of property merely, against the arts and legislation of professed friends. The protection therefore is not to A. or B. because he may happen to be a manufacturer, or a ship-master, or a cotton-planter ; but it is to the property, of whatever kind it may be, that he has invested in the factory, the ship, or the plantation. Suppose any one man to have embarked his whole fortune, in equal proportions, in a cotton plantation, a cotton mill, and a ship. Is it not apparent that all three must be protected ? And is the protection to him and not to his property ? Is he protected as a manufacturer merely ? And is his plantation or his ship taxed for this protection, any more than his cotton mill is taxed for the protection of his raw cotton or his ship ? I have always defended the principle of these laws, upon the ground, that the protection was wholly to the property ; that the benefits to particular individuals were incidental merely ; and that our safety and prosperity mainly depend upon the vigilant and fostering care of Congress, in protecting American capital, and American enterprise. Sir, we may as well disband our Army, and dismantle our Navy and our fortresses, as to open our ports to the unrestricted introduction of the varied products of foreign labor.

Among the earliest acts of this Government, there will



be found one for the protection of the navigating interest. My colleague, (Mr. CAMBRELENG) in the title of his bill, seems to profess the same thing, but, on looking at its provisions, there is not to be found a line or a word which has any direct application to our shipping interest. It is known to the House that our mercantile marine has always been protected, but never that I know of too highly protected. Now, I suppose this protection was not, and could not have been given for the sake of the master or the sailor; but for the sake of the large amount of American property, which had been and might be invested in ships. No man now denies the policy, or doubts the necessity of amply protecting the shipping interest, and yet, the money laid out in a ship has no better claim for protection than the same amount laid out in a cotton mill, or in a sugar, cotton, or tobacco plantation.

One of the signal advantages of this protecting system, is to put the property, the skill, and industry of our citizens, upon an equality as near as may be. Nearly all the wealth of the country is invested in agriculture, in manufactures, and in ships or vessels. And the great end of protection is to put all this property, however diversified its employment, in a condition of equal safety, so that all classes of our citizens may be benefited, as all clearly will be, where the property and employment of each is fairly and fully protected.

It often occurred to me, during the argument of the gentleman from Georgia, (Mr. WAYNE,) how it could be, and whether it were possible, that the Southern States were ground down to the dust, by the oppressive effects of the tariff laws, whilst all their great interests have always been, and still are more highly protected, by these same laws, than any other class of interests in the United States? Their greatest staple productions are cotton, sugar, and tobacco. Is it any part of their complaint that these are protected? And do they propose to repeal this protection? Oh, no! And what is it? A protecting duty on sugar of three cents a pound; on cotton, three cents a pound; and on manufactured tobacco, (other than snuff and segars,) ten cents a pound.

The House, I hope, will recur with me, for a moment, to the early history of the Government. Among the strongest reasons assigned for the adoption of the Federal Constitution, was the protection it would afford to our commercial interests. As the old confederation had no power to protect them, and as the States did not and could

not do it, the whole power over commerce, and over the means of sustaining it, was given to the Federal Government. And if Congress will not protect the sugar interest, for example, who will? How else can it be done? Now I take it for granted, because I have been informed by sugar growers, that if the duty of three cents a pound on brown sugar was taken off, the planters in the Southern States would have to abandon the cultivation of the cane; because they could not compete in the home market, with the West India sugar grower.

It has been stated, with respect to the article of cotton, that the duty was imposed, not for revenue, but expressly for protection. The cultivation of the article was then in its infancy—the product small—its success uncertain. Then, but a few thousand—now, near a million of bales are annually produced. Still, at the present low prices of upland cotton, were the duty taken off and the foreign article admitted duty free, our manufacturers would work up a portion of foreign cotton. There can be no doubt of it. I do not say, that the cotton of Brazil, or of Egypt, would wholly take the place in our cotton mills of the Southern cotton. The cultivation of cotton, in the South, is too far advanced to be ruined by any ordinary competition. But it is enough for my argument, if a single bale more of foreign cotton would be used here, in consequence of repealing the duty, because, there being an over-production of cotton, every bale of the foreign article consumed here, would deduct the same quantity of Southern cotton from the general market. The Southern cotton planter, therefore, would lose by the operation at home, and would gain nothing abroad.

The same course of remarks will apply to the article of tobacco. The duty of ten cents a pound on it, amounts to prohibition. Were the duty taken off, I admit, that foreign tobacco could not come into competition with ours, so as to ruin our tobacco planters, any more than the foreign growers of grain could ruin all our farmers. Yet, it cannot be disguised, that every pound of foreign tobacco, and every bushel of foreign wheat, brought into the country, and consumed here, would take the place of the like quantity of American produce. The tobacco planter and the grain grower, therefore, while the home market gradually fell into the hands of foreigners, and the markets abroad were closed against them, or were precarious as they now are, would soon find themselves obliged to produce less and less until they ceased to pro-

duce altogether, except for their own necessary consumption.

It is not a little remarkable, that manufacturers are so unsparingly abused and vilified, when every one knows, that the production of sugar and tobacco combine, most intimately, the manufacturing and agricultural interests. One part of the preparation, both of sugar and of tobacco, is as much a manufacture as is the fabrication of cotton or of wool. The first process is agricultural—the last, strictly manufacturing. The two interests are often united on the same plantation, and in the same planter.

With respect to the great interests of agriculture, manufactures, and navigation, what has always been the policy of England? And what, for several years past, has been the policy of France and of Russia? Has there even been a period since manufactures were first commenced in England, when she did not protect them by her laws? Or can a period be found when the manufactures of wool and of iron would have succeeded in that country, without the protection and aid that her laws gave them? if there be, I have never discovered it; nor have I ever met with any one who could point it out to me. The gentleman himself (Mr. WAYNE,) referred to the bounties, which the British Government, in the infancy of her manufactures, paid directly out of the treasury. But the bounties now given by that government, are of a different kind, being nothing more than a drawback of the excise on the articles exported. During a long series of years, England prohibited, in terms, the importation of many articles, of a kind which she manufactured; and on others, the duties were so high, as, in fact, to amount to prohibition. Her cotton manufacture is now the greatest she has. This is protected by an advalorem duty of about 28 per cent. and her printed calicoes, notwithstanding the cry of "free trade," are protected by a specific duty of six cents the square yard. This operates as a prohibition, except perhaps to a few French prints of a very fine quality, and high price.

In the whole history of England, down to the present period, and notwithstanding the speeches of Mr. Huskisson, and the assertions of others, which have been so often quoted upon us, about the revision of her revenue laws, we find the principle of her system the same. It is protection—there is no instance, that I know of, in which she has purposely given up the principle of protection. While she has modified her laws in respect to navigation, and to some branches of manufactures, she has never for



a moment, lost sight of thoroughly protecting her manufacturing, navigating and agricultural interests, from all foreign competition. I am aware, that she has reduced the duty on woollens, to 15 per cent.; and Mr. Huskisson assigns the reason for it. He says, that branch of industry is so well established, that a protection of 15 per cent., will enable her manufacturers of wool, to compete, successfully, with the world. But, he goes on to say, that, if it can be shewn, that the cotton manufacture, or any other manufacture of the Kingdom, cannot stand with the present degree of protection, the duty shall be raised—that he will not hazard one of these interests—that all shall be fully protected. France and Russia are steadily persevering in the same policy. Such also is our policy.

So many allusions have been made to the various interests in different portions of the Union, that it may not be improper to look a little into the relative condition of the Northern and Southern States.

Neither the skill, nor the labor, nor the staple productions of the North, or the East, have ever been adequately protected, while those of the South, as I have already shown, have always been fully protected. Still we hear loud complaints from the South. Sir, I will not undertake to controvert the statements which have been made to us, of the oppression and misery prevailing in that quarter of the Union—nor will I say, that these complaints are unfounded. But this I will say—that in my judgment, they proceed from the anticipation of evils, rather than from evils felt. Most of these complaints are from South Carolina and Georgia, and it may be well to compare the relative population of those States, that are against protection, with those that are for it. According to the best estimates, it will be found, that South Carolina and Georgia together, contain not over a half a million of free inhabitants. The cotton planting States contain about two millions, and the other States about eight millions, so that the whole Southern interest stands to the rest of Union, in the proportion of two to eight. And the States of South Carolina and Georgia, in the proportion of half a million to ten millions.

But it is worthy of enquiry, whether any thing, and what has been done towards relieving our Southern brethren from burdens, common to all, which they say have borne heavily upon them—but which eight-tenths of the American People have not felt. Sir, the duties on wines have been reduced about one-half. The consumption of

wines in the South, will I suppose be admitted to be somewhat greater in proportion to the population, than it is in the North. Well, sir, this is not all. During the present session of Congress, the duties have been greatly reduced on teas, coffee, and cocoa. These are articles of general consumption, and as far as the duties are a tax upon the consumer, so far the cotton planting States have been relieved. As a generous People, willing that others should live, they ought to be satisfied. But the price of their lands and produce has fallen! So it has in the North—so it has every where. The People of the South do not suffer more than the People of the North. I am inclined to believe not so much. Yet, some few of our brethren there, charge their bad crops, and low prices, to the oppressive effects of the Tariff laws. Not many will believe it, any more than they will believe that protection is oppression.

The low prices and the distresses complained of, are not confined to our own country; they exist elsewhere, and are severely felt among most of the European nations. They have not sprung from the Tariff, but from causes beyond it. Their origin is to be traced to the recent and radical changes in the habits and policy of the commercial world. The time was, when the United States were the granary of Europe. Then all our energies were directed to supply her markets with provisions. Our Embargo and non-intercourse laws, instead of starving our enemies, taught them to raise their own bread-stuffs. The war that succeeded, continued this state of things, and moreover, forced up manufactures amongst us. After the battle of Waterloo, and the general peace that followed it, millions of hands were suddenly converted from non-producers, into producers. This vast multitude of human beings, thus cast back upon the earth, were compelled to earn their bread, or starve. And at this day, there is scarcely a commercial nation in Europe, that does not produce and manufacture more, than her subjects can eat or wear. Great Britain only is obliged to depend on foreign countries to supply her with breadstuffs, for about three months in the twelve. France, Russia, and most of the Northern powers, instead of buying their grain, and provisions of us, have these articles to sell. Several of them are also actively engaged in manufacturing. In truth, nearly all the commercial nations of the earth are now much in the same relative condition; each wisely judging it better to depend upon her own resources, than upon the resources of others. Who would think of importing

for home consumption, wheat or corn from France, or the Black Sea? Or rice from the East Indies? And yet these articles are more abundant, and cheaper, there, than here. Hence it is, that there are no unfailing markets abroad, for our raw productions, and why shall we adopt any measure, or pursue any policy, which will destroy our markets at home?

There is a much wider difference in the soil and climate of our country, and in the pursuits of our citizens, than in the peculiar interests of the several States. The essential interests of the States and of the People are the same, and no philosophy or sophistry can prove them to be diverse or irreconcilable.

It is known to many who hear me, that much of the country in the North is mountainous, cold, poor, and sterile, while in the South much of it is level, warm, rich, and fertile. In the North the frosts continue for half the year: In the South they are rarely felt. The husbandman of the North is compelled to toil for his living from the rising to the setting of the sun. It will not do for him to fling the seed into the earth and leave it to take care of itself. He must watch and nurse it. He must work hard and spend little. But he of the South commits his seed to a genial and generous soil: It springs up and grows while he is reclining under the vine or the fig tree.

I complain not of this: it is the allotment of Providence. In some respects, the Southern States have the advantage: In others, the Northern States. The products of each are peculiar and of great value. Labor is well rewarded in both, and each can supply the wants of the other. Wherein, then, are Northern interests opposed to Southern? Or wherefore are Southern men hostile to Northern interests? Are not the Northern and Southern laborer equally entitled to protection? And where is the hardy laborer, South or North, who complains of your laws? There is nothing in the present condition of the Southern States, that I can comprehend, which warrants this continual cry of oppression. Sir, I have been among our Southern brethren. As a People, I know them to be hospitable; and I believe them to be generous and just. If aggrieved, I should rejoice to relieve them, if I could do so without aggrieving others more. But, sir, whenever, in my judgment, the great and permanent interests of our common country depend upon a rigid adherence to the protective system, there is no choice left. I must adhere to the system, and protect the property and labor of the People. After all, what is the injury of which



Southern gentlemen complain? Are their liberties invaded, or their property taken from them without their consent? Neither. Both are safe. What, then, is it? Why, that we manufacture our wool, cotton, iron, and hemp at home, instead of sending it to the workshops of Europe to be manufactured. That is the real grievance. To say these manufactures will succeed, if left alone, will not do. They need protection: the protection of the Government; and eight-tenths of the People have decided that they shall have it. The term "protection" seems to have some terror in it: Call it by any other name, if you will—but give the People the benefit of it.

What is the condition of the North and the South as to markets for their productions? The northern people are confined almost entirely to the home market. Were the foreign demand for flour equal to their ability to produce it, they might annually send abroad four or five millions of barrels, instead of the four or five hundred thousand only, which they now do. The foreign demand for their manufactures, though still small, is gradually increasing. Thus it will readily be perceived, that they cannot open the home market to foreigners without injury, if not ruin to themselves. Not so with the people of the South. They have a home market and a foreign market for their cotton, rice, and tobacco—both unfailing. Their sugar is consumed at home. The rice and tobacco find ready markets both here and in Europe. Of their cotton, nearly two hundred thousand bales are annually used in the cotton mills of the North; the residue of the crop is chiefly sent to England and France. Now, unless two good markets are worse than one, I think our Southern brethren have much reason to be contented with their lot. But the Southern people are highly favored in another respect. They have the monopoly of cotton, sugar, and rice. None of these are raised in the North. Their mountains teem with minerals, and their rivers afford great water power. They can manufacture coarse cottons and woollens cheaper than any body else; and if they will not avail themselves of these obvious advantages, it is their misfortune, and not our fault.

It is contended that exports pay the duties on imports, and, as the Southern planters supply two-thirds of the whole amount of the domestic produce exported, it is thence argued that the burthen of taxation falls heaviest on them. It is easier asserting than proving, that the American tariff imposes duties or burthens upon the American producer, as producer merely. I wholly deny that the producer, as such, of cotton, or wheat, or tobacco,

pays the duty or tax upon imports. He must be the exporter as well as owner. A gentleman in Georgia, for example, sells me a bale of cotton—I pay him the cash for it, and send it to Liverpool. As the owner and exporter, if the import duty falls upon either, it falls upon me. But, sir, neither the producer, nor the owner or exporter pays the impost duty, unless he is the consumer of the imported articles. Let us examine it. A cotton planter, with proper economy, having fed and clothed himself and his laborers from his plantation, has, at the end of the year, a thousand dollars worth of cotton for sale. Now, if he exchanges it with his neighbor for land or labor, he pays no duty or tax; if he sells it in Charleston, New York, or Liverpool, and takes the silver or gold home with him, he yet pays no tax—if he sells it in Liverpool, takes its value in British merchandize, which he brings to New York and disposes of at a profit—he pays no tax yet—but, if he takes the merchandize home with him and consumes it, then he pays the tax—he pays it as the consumer of dutiable goods.

But let us see how the account will stand upon the supposition, that the exporter and owner pays the duties on imposts. By looking into the Treasury returns from 1821 to 1828, it will be found that, during these eight years, there was exported, of domestic produce, from Georgia, \$36,315,710; from South Carolina, \$61,553,99; from Louisiana, \$68,203,330: and from New York, \$102,206,340. Hence it appears, that Louisiana is the largest southern exporter, and that New York exports more than South Carolina and Georgia together. If therefore, the exporter pays the tax, New York pays much the largest part, and has the most cause to complain. It is undoubtedly true, that a part of the exports from New York consisted of the produce of the Southern States. So did the productions of North Carolina swell the exports from South Carolina, and so also did the cotton, tobacco, and grain of the Mississippi, increase the exports from Louisiana. All this, however, alters not the result; for the question is not, who is the producer, but who is the exporter? Again, if either the producer or exporter, pays the import duty, it is certainly matter of some surprize, that Northern farmers and merchants have not yet discovered, that the one or the other of them were paying to the Government, 40 or 50 per cent. upon the value of the flour and other produce they sent abroad.

The gentlemen from Georgia, [Mr. WAYNE,] informs me, that he did not mean to be understood as contending, that the import duties fell exclusively upon the grower

or producer of the exports. If I now understand him, he maintains, that one part of the duties is chargeable on the consumer, and the other part on the producer; and that the tax upon labor is the mean quantity between our own tariff, and the tariff laws of foreign nations. I have shown, that the grower or producer, as such, does not pay—and it seems difficult to prove, that labor is taxed, unless the laborer be the consumer of the taxed article.

There is one important view of this subject, to which I wish to call the attention of the House. It is this—that the Tariff laws, that is, the protecting laws, of each nation, act directly upon the producers of every other nation with whom there is commercial intercourse. It has been shown that our Tariff does not tax our farmers or planters, as the growers of wheat and cotton. But the British tariff, for example, does tax them. Take a brief illustration or two of it. A Georgia planter has a pound, (or any other quantity) of cotton for sale: it costs him five cents a pound to raise it; its stationary market price here is *ten cents*, and in England *fifteen cents* a pound; but the British tariff imposes on it a duty of *five cents* a pound. Now, it is apparent, that the planter will realize in England, but *ten cents* for his pound of cotton; and that the British duty of five cents will fall on the consumer. If, however, the British duty is gradually raised to *ten cents* a pound, the market price there remaining the same, it is then equally apparent, that the pound of cotton here will fall from *ten*, to nine, eight, and so on, down to *five cents*, which will take away all his profits, and compel the planter to abandon the growing of cotton. Hence it is, that the American shipper, when he sends a cargo of goods to Liverpool, looks into the British tariff only. But when he is about to purchase, in Liverpool, a cargo of British goods, for the American market, he then looks into the American tariff; and also ascertains the price current of British merchandize in America. Our Tariff acts in the same way upon the foreign producer. The additional duty of *five cents* a gallon on molasses, imposed by the Tariff of 1828, did not permanently raise the price of the article in our market. The truth is, that the whole additional duty fell upon the West India producer. And, sir, this is one of the fundamental laws of trade,—it is one which my colleague, [Mr. CAMBRELENG,] seems to have overlooked in drawing his bill,—and it is one, it appears to me, that makes it impossible, with due regard to National safety, to adopt a universal Tariff of duties.



The revenue derived from duties on imports is certainly a charge upon the nation. This no one will deny. The nation pays it. And, so long as the tax is the price of protection, the nation is the gainer. Of the gross annual amount, every one pays that proportion which is properly chargeable upon the articles he consumes, and no more. If he consumes no article upon which a duty is charged, he pays nothing. But, in that case, he receives the benefit of protection, without paying any thing for it. And when he consumes a dutiable article, it is by no means true that he always pays the full amount of the duty charged upon the article; because it often happens that the duty is divided between the foreign producer and himself, as the consumer. This result is well known to commercial men.

So far, Mr. Speaker, as I could understand the gentleman from Georgia, [Mr. WAYNE] much of what he said seemed to tend to this conclusion, namely, that, if the tariff policy was not abandoned speedily, Georgia would withdraw from the Union, and that some of the other Southern States would follow her. He did not say so in terms; but such I understood to be the result of his argument—I hope I have mistaken both its tendency and his intention.

[Mr. WAYNE disavowed any such intention, and said, there was nothing he deprecated more deeply than such an event. He never would consent to it in any form. His fixed determination was to resist such a measure to the utmost of his ability.]

I am indeed rejoiced to hear the worthy gentleman disavow any such purpose. It is a great relief to me. Our Southern brethren have too much at stake to hazard such a step. I have undiminished confidence in their patriotism, and in their attachment to the Union. Partial disaffection is common. Restless and reckless spirits pester every community. But, fortunately, words are not deeds; and it generally happens that men bold of tongue are cautious of steel. And whence springs this disaffection? What is it about? Why, it is, whether the import duty shall be 10 or 15 per cent. more or less, on a yard of cloth or a pound of iron! The bare statement should quiet the fears of the timid. There is too much capital at stake to recede now. The honorable gentleman [Mr. WAYNE] thinks the whole manufacturing capital of the country does not exceed fifty millions of dollars. This seems to be greatly underrating it. It is perhaps impossible to ascertain the exact amount; but I believe I ha-

ward nothing in saying, that, in the State of New York alone, there is more than fifty millions of dollars actually invested in buildings, in machinery, and in other property, the profits of which depend entirely upon the success of her various manufactures. Great as her shipping interest is, she unquestionably has, at this moment, more property in factories and work-shops, than in ships. It has been asserted, by those who know better than I do, that there is now employed a capital of some sixty millions of dollars in our sugar manufacture, the continued success of which depends upon the protection our tariff laws give it.

Sir, the gentleman [Mr. WAYNE] was forced to admit that manufacturing establishments were valuable to the country around them. Here, they are not clustered in large towns, as in England, but are found springing up in all directions, about our numerous water-falls. In the States where these establishments are, the lands improve and the inhabitants prosper; but, in the States where they are not, the lands deteriorate, and the inhabitants grow poor. It is so the world over. Experience is daily demonstrating their great value to the whole country. The state of New York, whence I come, has a deeper interest in maintaining this "American System" of protecting her capital and industry, than any other State in the Union. And the people of the North and East cannot give it up. With them, it is wholly a question of competency and comfort, or of poverty and want.

I do not mean to say, that the Tariff laws are to remain unchanged. If they contain some bad provisions, they were not put in by me. They were forced in against my consent. And, being in, I am, for the present, against repealing, or modifying any of the duties, which will affect the manufacturing capital or industry of the country. Let the experiment be fairly tried. I do, however, mean to say, that our great national interests—the large amount of labor and skill, and the enormous capital, which, in various ways, are employed in manufactures, must be protected. Whatever may be the rate of duty required, whether high or low, still, they must be protected. Whenever the minority, in whose power it always is to make a Tariff law, either good or bad, will evince a disposition to arrange a scale of duties, with a single eye to the interests of all concerned, I will join them in the good work. But I have no desire to have the scenes of 1828 acted over again. The principal actors in the minority, on that occasion, openly avowed

their intention to be to make the Tariff Bill so bad, that the majority would be forced to reject it. They were, however, deceived, as such minorities commonly are.

So much for the remarks of the gentleman from Georgia, [Mr. WAYNE.]

And now, sir, let us see what effect this bill is to have upon our agriculture, manufactures, commerce and navigation. The title of the bill speaks of navigation—but the bill itself proposes a sort of universal Tariff, or scale of import duties, which is to become the standard rule of every nation and people.

The first section makes this broad proposition to every foreign Government : namely, if you—Great Britain for example—will admit the produce and manufactures of the United States, “at a rate of duty not exceeding thirty per cent. on the actual value,” we will thereupon admit your produce and manufactures upon “reciprocal terms.” Whenever an arrangement is made, the President is to announce the fact by proclamation. It is sufficiently obvious, that any arrangement of this kind must be made, either by treaty, or by legislation. If by legislation, then there can be no need of the President’s proclamation—because the statutes of the two Governments would necessarily prescribe the time and manner of carrying it into effect. But, if by treaty,—then the President’s proclamation would be necessary in that, as in every other similar case. Now, either way, it is plain that the power of Congress to protect the property and labor of our citizens, will be gone. This high and essential power, for which Congress is held justly and severely accountable to the People, will be rashly given up to the President and to foreign nations. I understand from my colleague, [Mr. CAMBRELENG,] that he expects to accomplish his purpose, if at all, through the treaty-making power. Let us, therefore, inquire, how the thing would work ; provided the bill was a law. A negotiation is set on foot—a treaty is made upon the basis of this novel law—is submitted to the Senate—ratified—approved by the President—and becomes the supreme law of the land. Well, sir, if no appropriation is required to carry it into effect, it is not laid before Congress. But if an appropriation is required, then it is laid before Congress, and this House is called on for the money : Can the House refuse it, without violating the faith and honor of the Nation ? clearly not—for this bill pledges both. What then ? Why, though the President and two-thirds of the Senate are the sole judges of this matter, which really relates exclusively to the in-



ternal, domestic policy of the country, Congress can do nothing—and though the stipulations in the treaty be ever so bad, the People must take them.

To understand fully the mischievous effects of this anomalous bill, it is necessary to examine some other provisions in it. The second section provides, that the "actual value" of the produce and manufactures of the foreign nation, shall be ascertained in the manner "prescribed by existing laws." These existing laws, therefore, are to be considered together with the bill, as forming the basis upon which the new arrangements are to be made. No duty, however, is to be charged on "any nominal valuation," but the charge is to be on the "actual value" of the articles. And, by the existing laws here spoken of, which are our revenue laws, this actual value is to be ascertained, not in the United States, but at the place whence the articles of merchandize are imported. Our rule in this respect differs from that of other nations. The value of an article imported into Great Britain, is ascertained in her own market, and not in the foreign country. For example : an American merchant sends a piece of cotton goods to Liverpool ; its value is ascertained at Liverpool, and the British duty charged on it. A Leeds merchant or manufacturer, on the contrary, sends a piece of broad-cloth to New York ; its value is ascertained by our custom-house officers, not at New York, but at Leeds, and the American duty, by this bill, is to be charged on that value. But this is not the worst of it. Nearly all the American importers have been driven from the British trade, which is now almost wholly in the hands of British agents ; and, if our duties were reduced to thirty per cent. upon the actual value of the merchandize, as proposed by this bill, the ruin of the farmer and manufacturer would be inevitable. The pressure of the trade on us is bad enough now, but it would be much worse then, as our protecting duties would be reduced one third. Suppose the British manufacturer should then, as now, ship his own goods to this market ; and suppose, in making up their invoice price, he should choose to consider the cost of the materials and the wages of labor, as constituting their actual value, thereby leaving out the interest on capital and the wear and decay of machinery, which vary from ten to thirty per cent. What would be the result ? Why, that British cloth would come to us invoiced at 70 or 80 cents a yard, instead of a 100 cents, and would, therefore, actually pay a duty of some 20 or 24 cents only, on the dollar, when it ought to

pay a duty of 30 cents on the dollar. With the usual deductions of from 5 to 20 per cent. for prompt payment, as it is called, the difference against us would be still greater. Now, sir, should the American merchant export to Liverpool these same British cloths, or American cloths of the same quality and cost, they would be valued in Liverpool, at 100 cents, or more, a yard, and would actually pay a duty of 30 per cent. So that the same yard of cloth, or a yard of cloth of the same intrinsic cost, would pay *thirty* cents to the British treasury, and *twenty* or *twenty-four* cents only to the United States' treasury. And this is the sort of reciprocity that the bill will fix on us.

My colleague (Mr. CAMBRELENG) remarked, that he did not suppose that this bill would affect the policy of Great Britain, at least for some years to come. Sir, I think so too. She cannot accept of our offer without opening her colonial ports to us, and repealing her corn laws; which last, I suppose, she can never do, because, I take it for granted, that, in the present condition of things, she is satisfied that agriculture is as essential to the prosperity of manufactures, as manufactures obviously are to the prosperity of agriculture. Neither did he (Mr. C.) think it probable that France, at present, would accept the proffered terms; but he thought that Portugal would. Suppose Portugal does, and we make a treaty with her, whereby it is agreed that she will receive our produce and manufactures at a rate of duty not exceeding thirty per cent. on the actual value thereof, to be ascertained as she pleases, and that we will receive her produce and manufactures at the same rate of duty on the actual value thereof, which value is to be ascertained, not as we please, but, at Lisbon, or at some other place in Portugal.

But, before I proceed to examine the ruinous effects such a treaty will have upon our farmers, mechanics and ship-owners, let me call the attention of the House to some of the provisions contained in our existing treaties with other nations.

The second article of our treaty with Great Britain, says that "No *higher* or *other duties* shall be imposed on the importations into the United States of any articles, the growth, produce, or manufacture of his Britannic Majesty's territories in Europe," "than are or *shall be payable* on the *like articles*, being the growth, produce, or manufacture of *any other* foreign country." Two cargoes of cottons and woollens arrive at the port of New York at

the same time ; one from Portugal, the other from England. The Portugese goods are entered at the custom-house, and pay the duty of thirty per cent. The British goods are also entered, and, by the provisions of this second article of our treaty with Great Britain, they pay a duty of thirty per cent. only. Is it no so ? I think it is ; and I know not how we can escape from it. What better arrangement, therefore, can Great Britain desire than this contemplated arrangement with Portugal ? Her ports will remain, as they now are, closed to us, while ours will be opened to her, as well as to the Portuguese.

Spanish vessels, by the fifteenth article of her treaty with us, coming from the ports of Spain or of *her colonies*, are to be admitted, for the term of *twelve years*, into the ports of Pensacola and St. Augustine, in the Floridas, "without paying other or higher duties on their cargoes" than are paid by vessels of the United States. Of these twelve years, three yet remain. Spain, therefore, might bring into the Floridas her West India sugars and rum, at a duty of thirty per cent. which would be about equal to a duty on rum of ten cents a gallon, and on sugar of one cent a pound. This would effectually ruin our own sugar growers.

With Colombia we have a treaty, the third article of which stipulates that the Colombians may trade with us "in all sorts of produce, manufactures, and merchandise, and shall pay no other or greater duties, charges, or fees whatsoever, than the *most favored* nation is, or *shall be*, obliged to pay." We have similar treaties, also, with Sweden and Norway, and with the Hanseatic Republics of Lubec, Bremen, and Hamburgh. It will be perceived by these treaties, that a Colombian, Swedish, or Hanseatic vessel, may import into the United States any article of any country which can be imported in one of our own vessels. A treaty, therefore, with Portugal, or with any other foreign power, in conformity with the provisions of this bill, would have the effect of opening our ports to the admission of the produce and manufactures of the world, at a rate of duty not exceeding thirty per cent. upon their value abroad. And these terms, having been deliberately offered by us, when once accepted by a foreign nation, we can never change.

My colleague [Mr. CAMBRELENG] calls this reciprocity. The bill, too, speaks of reciprocal terms. As applied to the shipping interest, this is well enough. It is our policy and our law now. And this reciprocity is simply between the ships of various nations in the same port, and



not between the laws to which these ships may be subject in the ports of the respective nations. For example : a British ship in one of our ports is subject only to the same tonnage duty and other charges as an American ship ; and an American ship in a British port is subject only to the same tonnage duty and other charges as a British ship, although these duties and charges may, at the same time, be twice or three times higher in a British port, under the laws of Great Britain, than they are in an American port, under the laws of the United States. But, sir, this bill proposes a sort of universal scale of duties to become, I suppose, a part of the law of nations, whereby each nation, under all circumstances, will be bound to admit every article at a duty not exceeding thirty per cent. on its value. The policy of imposing duties, whether for revenue or protection, is purely municipal, wholly domestic, and has no connexion with the mere transit of vessels and their cargoes from one foreign port to another. Why, therefore, stop here ? Why not make a universal assize of bread ? Why not propose that the wages of labor shall be equalized every where ? That no nation, great or small, shall have an army of more than six thousand strong ? or a fortress more than five feet high ? or more than five ships of war ? All these are for the defence of persons, property, and honor, and they do not stand more firmly on the principle of self-preservation, than does this "American System" of protecting the labor, skill, and industry of our citizens. Sir, the principle of this bill carried out, would soon make us dependent upon foreign labor ; would soon drive us to foreign work shops for all we want, from a hat to a shoe, from an anchor to a hob-nail. Let us look a moment at its operation. England is the mistress of the loom and the anvil. Her manufacturers, after supplying their home market at a profit of some twenty-five per cent., have a large surplus on hand. These surplus goods, together with the effects of bankrupts, to avoid any depression in the home market, will be sent here in greater quantities than ever. And, if hitherto they have successfully carried on this trade, and checked our manufactures, while the nominal duty has been forty-five per cent. ; surely, when, as proposed by this bill, the nominal duty shall be thirty per cent. only, they will completely destroy our manufactories of cottons, woollens, iron, and sugar, and in a few years take entire possession of the American market, supplying it when they please, and at such prices as they choose to demand. What matters it to us, in such an event, whether the

British duty on woollens be fifteen or fifty per cent. ? And will she abandon her agriculture, kill her flocks and her cattle, and take our grain, and provisions, and wool, in exchange for her manufactures ? Never ! Will France ? No, never ! They cannot do it, without individual and national sacrifices, which neither can ever make.

Not only our manufactures of cottons, woollens, iron, and sugar, but of lead, tobacco, hats, boots, shoes, and of other common necessities of life, are all protected by duties exceeding, and some of them greatly exceeding, thirty per cent. upon their value : yet all these are to be prostrated at a blow, by this novel experiment for the benefit of our navigation !

This is called a navigation bill. And what, sir, will be its effects upon the shipping interest of the United States ? It is quite apparent, that our commercial marine cannot, at the present day, find profitable or constant employment in the service of foreign countries—though it is probable that a few may be thus constantly and profitably employed. The reason is obvious. There is now scarcely a commercial nation that is not its own carrier. It follows, then, that our commercial marine must depend entirely upon the labor of our own citizens, and be sustained, if at all, by carrying to market the surplus products of that labor. And it is equally clear, that these products must be adapted to the state of the market ; that is, to the wants or the taste of the buyer. This presents to us, therefore, the true and only inquiry, shall we still rely, as formerly, upon finding a market for these crude, unwrought products ? Our cotton, rice, and tobacco, the produce of two millions of our citizens, still find a market abroad ; but there is comparatively none for the bread-stuffs and provisions, which could be readily, as heretofore, supplied to any amount, by the remaining eight millions of our citizens. This is easily accounted for. Nations that we used to feed, now feed themselves ; and they no more want to buy of us, than we do of them. This branch of commerce, once so thriving and lucrative, and which employed so many of our merchant vessels, is now falling off. The cotton, tobacco, and rice, of the South, great as they are, will give constant employment to but few of them. What then is to sustain our merchant vessels—our navigation ? That is the question. The old sources are drying up. A new condition of things has arisen, and there is no getting back to the old again. Whence, then, is help to come ? From manufactures, added to such raw materials as still find market abroad.

The ability of eight-tenths of our citizens to produce raw materials, is daily increasing ; and yet the foreign market for them is daily diminishing. How, then, is their skill and labor to be brought in aid of the shipping interest, except by giving new form and value to the raw material ? And will not such an amount of skill and labor, in the shape of manufactures, give new life and strength to our navigation ? Yet this bill proposes to benefit navigation by prostrating our manufacturing establishments ; thus cutting off the very means by which it is to live. Sir, will England, France, and Russia, give up their commercial marine, or hazard its prosperity upon the condition that they shall supply us with manufactures, and we them with cotton, tobacco, and bread ? They are now, more than ever, our determined competitors on the ocean. They will not, for they cannot, cease this competition. How, then, can we sustain ourselves, unless we, like them, draw nutriment and strength from the loom and the anvil ? Unless we apply our skill and labor to existing habits and wants, and put in requisition all our means, as they do theirs, to supply them, how can we hope to extend our commerce or our power ?

But it is said that our navigation is declining, and, that this is owing to our tariff laws. Down to 1807, the United States enjoyed a large and unrivalled carrying trade. Thence, to the general peace in Europe, in 1815, our ships, during the greater part of the time, were detained in port by the Embargo and the war, and the carrying trade, in the interval, fell chiefly to Great Britain. This injured our navigation, and benefitted hers. Since that period, a new condition of things has arisen, in consequence of which we have powerful, interested, and persevering rivals in the carrying trade, which once gave us such ample employment and profit. Still, and in spite of this rivalry, our tonnage has, not only not declined, but is now, in fact, greater, in proportion to our population, than that of Great Britain, or of any other nation. The Treasury records prove, that it amounted, in 1824, to 1,389,163 tons ; in 1825, to 1,423,111 ; in 1826, to 1,534,190 : in 1827, to 1,620,607 ; and, in 1828, to 1,718,700. There has been a gradual increase since 1818, when the tonnage lists were corrected, and since 1823, the increase has been about 480,000 tons. This does not look much like decay. The shipping interest may be, and doubtless is, greatly depressed. So is almost every other interest. Our domestic manufactures, annually exported,



amount to several millions of dollars, and the quantity and value are rapidly increasing.

The dye woods, and other dye stuffs imported from abroad, already employ a large amount of tonnage, and will annually employ more and more. And yet, my colleague, [Mr. CAMBRELENG,] by way of benefitting navigation, proposes a measure which will dry up the sources, and paralyze the hands that sustain it, and finally cast it adrift upon the Ocean to seek and serve other, and kinder, and wiser masters.

My colleague spoke of some contest between the democracy and aristocracy of England. Sir, that is a matter which I shall leave entirely to my colleague, Mr. Huskisson, and the British Parliament, to settle in their own good time and way. But he made another assertion, which I cannot pass over in silence. He said there was, in this country, "an aristocracy of manufacturing capitalists, who would, if they could, grind the democracy of this nation to ashes." There has, indeed, lately sprung up an official aristocracy in our country. But a manufacturing aristocracy! Our manufacturers aristocrats? Why, sir, should one of them attempt to coerce the opinions or votes of those he employed, he would find, to his cost, none so poor in purse or spirit as not to spurn him, and quit him. Why not talk of an aristocracy of farmers, or of mechanics? Sir, between the farmers, mechanics, and manufacturers, there is a dependence which is mutual and inseparable. Had my colleague (Mr. CAMBRELENG) understood the interests, pursuits, and feelings of the democracy of the country, he would not have used such language. What the democracy of the city is, I pretend not to know; but, in the country, I do know what it is. Farmers, mechanics, manufacturers, laborers; men who earn their bread in the sweat of their face, these constitute the bone, and blood, and muscle of the democracy of the country; these are the men who will neither grind nor be ground to ashes—and this is the democracy that knows the difference between a manly dependence on its own skill and labor, and a servile dependence on the workshops of England. If my colleague [Mr. CAMBRELENG] is still incredulous, let him propose to relieve the democracy of the country by burning and destroying the manufacturing establishments among us. This democracy, whose oppressions he so much deplores, will then teach him, that the relief he proposes is ruin in disguise. This same democracy will also teach him that there is a

lack of wisdom in tampering with interests, whose magnitude and connexions one does not comprehend.

I will detain the House but a few moments longer. Reason and experience have shown the necessity and demonstrated the value of the protective system ; persuaded that it has done much, and will do more in advancing the prosperity of the nation, I am for maintaining it. I think we are bound to do so. This bill holds out to England and other nations, hopes, which I am sure can never be realized. These perpetual proffers are unfair to them and to our own merchants. England should be made to know that we mean, fairly, but effectually, to protect the capital, skill, and labor of our own citizens ; that this policy is settled ; and, that, with regard to it there will be no compromise—there can be none. Of this she has no right to complain. She protects her interests, and we must do the same. The “American system” will give us wealth and strength in peace, and men and money in war, and we cannot abandon it without exposing the nation, naked and defenceless, to the arts and arms of her enemies.







22  
S P E E C H

OF

HON. J. SUTHERLAND, OF NEW YORK,

AGAINST

THE HOMESTEAD BILL.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, APRIL 22, 1852.

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WASHINGTON:  
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.  
1852.





## THE HOMESTEAD BILL.

The House being in the Committee of the Whole on the state of the Union, (Mr. HIBBARD in the chair)—

Mr. SUTHERLAND said:

Mr. CHAIRMAN: I regard the bill now before the committee, commonly called the "homestead bill," as by far the most important measure that has been brought forward at this session, whether you look at it as a question of constitutional power, or as a question of public policy. It is this bill, and this bill only, which I intend now to discuss, referring only to the other land measures of this session when necessary to do so, to present more fully my objections to it.

I am opposed to the "homestead bill" for reasons, some of which appear on the face of the bill; and others of which do not appear on the face of the bill. I shall first state the objections which I say appear on the face of the bill; and next the objections which arise and derive their force (if they have any) from other measures of the Government past or proposed, and from other considerations not appearing on the face of the bill.

### OBJECTIONS TO THE HOMESTEAD BILL APPEARING ON ITS FACE.

I. The title is wrong. It is entitled "A bill to encourage agriculture, commerce, manufactures, and all other branches of industry, by granting to every man who is the head of a family and a citizen of the United States a homestead of one hundred and sixty acres of land out of the public domain, upon condition of occupancy and cultivation of the same for the period herein specified." The propriety of the title of an act of Congress ought to appear from the act itself, and not from facts or considerations which do not appear on the face of the act, though such facts and considerations may be proper and necessary to show the policy of the act.

It does not appear from this bill that it is "a bill to encourage agriculture, commerce, and manufactures, and all other branches of industry." It does appear from the bill that it is a bill to dispose of the public lands, by granting them in certain quantities to a certain class of persons: to heads of families having no land, or having less than five

hundred dollars of personal property. How does it appear from the bill that it is "a bill to encourage agriculture, commerce, and manufactures," &c.? Cannot a man worth \$500, or owning land, cultivate as well, and raise as much grain on one hundred and sixty acres of land as a man worth but \$5 or \$499, or owning no land? Is giving land to a man encouraging agriculture, manufactures, &c., any more than selling it to him?

Is either selling or giving land on condition of cultivation encouraging manufactures?

Are the provisions in restraint of alienation; to enforce a continuous residence on the one hundred and sixty acres for five years; and exempting the one hundred and sixty acres forever from all liability in any event to the payment or satisfaction of any debt, to encourage agriculture, &c.?

All capital is employed either in "agriculture, commerce, manufactures, or in other branches of industry." This bill gives additional capital, additional land, to be employed in agriculture—it does not give additional labor. It does not propose to encourage even agriculture, by increasing or extending the knowledge of it, as a science, or an art; or by holding out rewards or premiums for the most successful and profitable culture, for the greatest product from a given amount of labor and of land, for the best and most profitable use of the capital; or in any other way than by giving the land, on condition that it be cultivated;—how cultivated, or whether well or badly cultivated makes no difference; the grantee is in either case entitled to the one hundred and sixty acres of land.

This bill, then, cannot encourage even agriculture in any other way than by causing an additional number of acres of land to be cultivated, or by causing an additional number of persons to become farmers: in other words, this bill is called "A bill to encourage agriculture," &c., because it is said its effects will be to increase agriculture by increasing the gross amount of the agricultural products of the United States, the number of acres of land to be cultivated, and the number of cultivators—that is, by causing additional capital and persons to be employed in that branch of indus-

try. Now, it may very well be that this additional capital, given as a *bonus* by the Government, may discourage agriculture. Suppose Congress should pass a law by which every citizen worth less than \$500 was to be supplied, at the expense of the public Treasury, with leather to the value of \$200, on condition that he or she should become a shoe or boot-maker, and personally work such stock of leather up into boots or shoes, would such a law encourage the "branch of industry" of boot and shoe-making? Would it not discourage that "branch of industry" by driving a portion of those already employed in it to other employments, and by preventing others from entering into it?

It is the *profit* on the capital employed, and not the *amount* of that capital, that the farmer looks to. Any act or measure of the Government which would increase the profit of the agriculturist, either by lessening the cost of production, or by increasing the product with a given amount of labor and of land, would be an encouragement to agriculture; but is it not strange, that a bill which offers a *bonus* to the mechanic and manufacturer to quit his calling and engage in agriculture, and thus become a *producer* instead of a *consumer*, should be called a bill to encourage agriculture, especially when you take into view the fact, that the market for nearly the whole of our agricultural products is a home market, and that it has been, and is yet thought to be, the policy of the Government to create and increase that home market by protecting our manufactures against foreign competition?

But this bill is entitled "A bill to encourage agriculture, commerce, manufactures, and all other branches of industry," &c. It is to be a *universal panacea*, and it is to shed its beneficent favors on *all*, by confining its bounty to the *few*—to the "heads of families," who have no land and are not worth \$500.

Now, Mr. Chairman, I have heard of charity, like mercy, being "*twice blessed*," of its "blessing him that *gives* and him that *receives*;" but this charity is an improvement; it is charity which is to be *three times blessed*—it is to bless not only the Government that gives; not only the *few* that are to *receive*; but it is to bless those whose property is taken and given away by the Government, without any compensation; and who, by the act of charity itself, are not only expressly excluded from its benefits, but are to be positively injured by it. But what is there on the face of this bill to show, that it is intended to benefit "manufactures, and all other branches of industry?" It brings no additional labor to the country, for foreigners are carefully excluded from the benefit of its operation. It creates no additional capital—it merely changes the owner. It takes the property of *all* of the citizens of the United States, and gives it to a few of them exclusively. True it does this on condition of settlement and cultivation; but those who are to settle on, and cultivate the land under the act, are to be full-grown men and women, "heads of families." They are not created by the act; they are not to come from the heads of the statesmen who originated this measure, or of the legislators who may pass it, however wise, as Minerva is said to have come from the head of Jupiter "all armed and grown." Where, then, are these settlers to come from, unless they come from the work-shops and manufactories of "other

branches of industry," and from the farms of those now engaged in agriculture.

Now, Mr. Chairman, I will not say, if we had a *limited* territory with a *surplus* of population; if there was an abundance of labor instead of a scarcity; if labor was here, waiting, looking for employment, instead of *demanding* its own terms; if the price of labor was not increasing, while the price of the products of labor are diminishing; if, in consequence of this high price of labor, "manufactures and other branches of industry" did not claim protection against foreign competition; and if it had not been the past policy of the Government, and it was not thought now to be the present and future policy of the Government, to afford that protection, at least incidentally, by taxing through a system of duties on foreign importations the consumer for the benefit of the manufacturer, and thus indirectly compelling the consumer to pay a portion of the wages paid by the manufacturer; if these "manufactures and other branches of industry" thus protected, had not been, were not now, and were not likely to be, almost the only markets for the products of our agricultural labor; whatever might be thought or said of the *constitutionality* and *policy* of this bill, yet I would not say that its title was wholly inconsistent with its provisions. But, in the present condition of things, and in view of the immense number of acres of unimproved land, comparatively near market, owned by *individuals*, companies, corporations, and States, now waiting for sale, settlement, and cultivation, and to bring about the sale, settlement, and cultivation of which, an immense capital has been invested in railroads and other internal improvements; I do say, that to call this bill (by which the Government, for the supposed benefit of the laborer and the landless, does nothing more nor less than offer a *bonus* to the laborer and landless to leave the manufactories, work-shops and farms in the old States, and settle on the public domain in the new States) "a bill to encourage agriculture, commerce, manufactures, and all other branches of industry," is a gross perversion of truth—that its title is wholly inconsistent with its real intent, object, and provisions.

Even admitting that the bill may remotely and indirectly "encourage agriculture," &c.; that the public welfare may be remotely and indirectly promoted by the additional number of acres of land brought into cultivation, by the additional number of persons brought from other employments and made farmers by the bill; yet such *public benefit* is most clearly from the bill itself, but an incident to its main object and purpose. What is this main object and purpose? Most clearly to benefit the "heads of families," who have no land and are not worth \$500. All parts and provisions of the bill, including the title, appear to be consistent with this view of it, and with no other. How can it encourage *all* branches of industry, except by *giving* capital to those who had no land, or less than \$500 before? The first section, which confines this bounty to the "man or widow who is the head of a family, and a citizen of the United States on the first day of January, 1852, and who has not disposed of his or her land for the purpose of *obtaining* the benefit of the provisions of this act;" the clause in the second section requiring the applicant for the benefit of the act, to make an affidavit, "that



"he or she does not intend to settle on said land to sell the same on speculation, but in good faith to appropriate it to his or her own *exclusive use and benefit*;" the clause or provision in the same section, and in the fifth section, which, in substance, make it a condition of the grant that the beneficiary of the act and of the Government shall reside on the land for five years, and shall not alienate the same, or any part thereof; and that the land shall be forfeited to the Government if he or she abandons the land for more than six months at any one time; the provision in the fifth section, that the land acquired under the act "shall in no event become liable to the satisfaction or payment of any debt," contracted *before or after* the issuing of the patent; the fact, that, by the act, all foreigners, except such as shall be residents of one of the States or Territories at the time of the passage of the act, are carefully excluded from its benefits,—would each and all of them appear to be consistent with no other view of this most extraordinary act of *pretended public policy*, than that, by it, the land is given as a charity to the "heads of families," having no land, and having less than \$500 of property, *because they have no land, and because they are not worth \$500.*

Some of the provisions of the act above referred to, particularly those in restraint of alienation and exempting the land from liability to debt, appear to look further even than to the present charity of the gift itself. These provisions would seem to be intended to take care of the *future* good and welfare of the settler and of his descendants, either upon the ground that they will not have judgment and discretion enough to take care of themselves, or upon the ground of justice, that he who makes a *gift* has a right, by way of satisfaction or consideration, to tie the gift up with useless restrictions.

I have called this act an act of *pretended public policy*. I repeat it. I say that from the bill itself, on the very *face* of the bill, it appears that the allegation, that it is a bill to promote the *public welfare* is a mere pretense. For without stopping now to show more particularly, that most, if not all of the provisions of the bill before referred to, are wholly inconsistent with any view of it as an act of *public policy*, I ask, why are foreigners excluded from the benefit of the act? Any one can see that every able-bodied foreigner that might be induced to come and make his home among us, would be a clear gain to the wealth and power of the whole country; and whatever political reasons might be urged against such a policy, yet it must be admitted; that any act which tended to induce such immigration, would *so far* plausibly present itself as an act of public policy; as an act intended to promote the public welfare. If the *public welfare* is to be promoted by adding, in this sudden and extraordinary way, to the total number of acres of land now cultivated, and thus adding to the total of the agricultural products of the country; it should be done by adding to the labor of the whole country, and not by taking the labor which we now have employed in agriculture, manufactures, and other branches of industry in the old States, and transferring it, by an act of Congress, to the new lands of the West.

Even that provision of this bill which prevents the beneficiary of the bill from entering on, and

cultivating under the bill, more than one quarter section, shows that the object of the bill is not the *public welfare*; for if the object of the bill is to promote the public welfare by causing additional land to be cultivated, then the more land this recipient of the bounty of the Government cultivates, the better, and the sooner he sells one quarter section, which he has improved, to another settler, who has the misfortune to be worth \$501, or own a small farm in Connecticut, left him by an industrious and economical father, and takes another quarter section, and improves that also, the better.

What is this bill, then, Mr. Chairman? What ought it to be called? What ought to be its title? It is in fact a bill to grant to every man or widow in the United States, who is the head of a family, and has no land, and is not worth \$500, one hundred and sixty acres of the public domain, on certain conditions, *for his or her benefit, and thus more nearly equalize the distribution of property.* It should be so entitled—it should be so called. What is it called by the newspapers, by the whole country, by the members of this House, by Senators in the other end of the Capitol, by everybody, everywhere, except by you, sir, when you take the chair? The "homestead bill," the "free farm bill." Who thinks of calling it "a bill to encourage agriculture," &c., except you, sir, as chairman of this committee, when compelled by the rules of the House to call it by the name it in fact has upon the record.

But, Mr. Chairman, not only is the title of this bill wrong, but, as it is now, it has a wrong *paternity*. As introduced by the gentleman from Tennessee, [Mr. Jounson,] it was free from some of its most objectionable features. It was referred to, and as it is now, with its so-called amendments, comes from the Committee on Agriculture. It was referred to and comes from the wrong committee. It has little, if anything, to do with agriculture. It is a bill to dispose of the public lands, and should have been referred to and come from the Committee on Public Lands. Now, Mr. Chairman, these objections to the title and to the origin of the amendments are not merely technical. Sometimes it is of great importance to detect a misnomer and a factitious origin. I believe the title of this bill, and the fact that it came before the House from the Committee on Agriculture, has had a tendency to divert the public mind from its real object and effect. This title and peculiar reference would appear to have been given to it with a view similar to that with which the apothecary coats his pills with sugar, viz: To conceal the nauseous compound within, to make them go down easily. I intend to rub off this sugar-coat still more, before we are called upon to swallow this *pill*, and to show the agrarianism, and the attack upon property concealed within.

II. The second objection which I take to this bill, Mr. Chairman, as appearing on its face, is, that it is *unconstitutional*. I do not now raise, or intend to discuss the question, whether, under that clause of the Constitution giving Congress the power "to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States," Congress has, or has not power to make the grants for railroads, or to dispose of the public lands by the various other measures, and for various other purposes, brought forward at this session of Con-



gress; but I say, admitting now, for the sake of the argument, that, under this clause of the Constitution, Congress having the absolute power of disposition; the purpose for which it is exercised, and the mode and manner of exercising it, is just as much a question of public policy, the exercise of it just as much a matter of discretion, as the exercise of any other power expressly given to Congress by the Constitution; yet, I say, that this bill is unconstitutional on its very face—my argument is this:

The public domain of the United States belongs to the *people* of the United States, not to the Government of the United States. The title, the fee, the property, is in the people of the United States, and not in the Government of the United States; it is in the people of the United States, as citizens of the United States, and not as citizens of the *several States*—the States, as States have no title to, or right in the public domain. The Government of the United States simply acts as the agent of the people of the United States, in disposing of the public lands, under and in virtue of the power given by the people in the Constitution.

A B, a citizen of the United States, worth \$500, or having land, has as much right and interest in the public domain as C D, who is not worth \$500, or who has no land—A B, worth \$500, or having land, has as much right to one hundred and sixty acres of the public domain as C D, who is not worth \$500, and has no land; yet this bill gives one hundred and sixty acres of that domain to C D, worth less than \$500, and having no land, on certain terms and conditions, and does not give one hundred and sixty acres of the same domain to A B, who is worth \$500, or who has land, on the same terms and conditions; or rather, the bill excludes A B, because he is worth \$500, or has land, from the benefit or bounty granted, to C D, because he is not worth \$500, and has no land. The bill not only undertakes to convey to C D the right and interest which A B has in the one hundred and sixty acres, without any compensation to A B, but expressly prohibits A B from taking and holding other one hundred and sixty acres on the same terms and conditions, by way of compensation. This is plainly and unequivocally an infraction of the rights of property, and of the principles of justice. Even if it were a question of public policy, and not a question of constitutionality, there is no room to raise a question of public policy. The policy of the bill is, if any, to have the land settled and cultivated. It is the cultivation that adds wealth to the nation; but it is absurd and repugnant to reason to suppose, that a man worth \$500 or over, cannot cultivate one hundred and sixty acres of land, as well, and raise as much wheat on it, as a man worth less than \$500.

Now I do not know, nor do I say, that there is any express provision in the Constitution, that Congress shall not take the property of A B without his consent and without compensation, and give it to C D; or any provision which in terms prohibits Congress from passing a law giving rights and privileges to citizens worth less than \$500, and expressly prohibiting the same rights and privileges to citizens worth \$500 or over—a law giving the *public property* to C D because he is not worth \$500, and refusing it to A B, because he is worth \$500. Nor do I find anything in the

Constitution, which in words prohibits Congress from abolishing all penalties for crimes against property committed within its jurisdiction; or from granting C D one hundred and sixty acres of the public lands, on condition that he should murder A B, or steal his property, or take it by force, or abduct him out of the country, or commit any other crime or misdemeanor against or upon the person or property of A B. Yet all will admit that such acts of Congress would not only violate every principle of justice, but would be plain infractions of the Constitution. Why? Because the very first sentence of that Constitution, the preamble, proclaims that it was ordained and established by the people of the United States, “in order to form a more perfect union, *establish justice*, insure domestic tranquility, provide for the common defense, promote the *general welfare*, and to secure the  *blessings of liberty*” to themselves and to their posterity. The security and protection of the rights of property are involved in any idea of justice. It is clear that Congress would not have power to dispose of the public lands in any way or for any purpose prohibited by the Constitution; for the purpose, for instance, of encouraging or supporting any particular church or denomination of Christians. Is it not equally clear that Congress has no power to dispose of these lands in any way, or for any purpose inconsistent with the very object with which the Government was organized and that Constitution framed, as declared by the Constitution itself? I submit, therefore, Mr. Chairman, (without reference to the declaration of certain rights of the citizen taken substantially from *Magna Charta* and not originally in the Constitution, but subsequently adopted by way of amendment,) that any infraction of the rights of property, by unequal and partial laws, is as plainly unconstitutional, as if such laws had been expressly prohibited by the Constitution; and that when such appears to be the intent and operation of any law from the record, from the act itself, it will not do to say that the motive, or policy, or intent in passing the act, “*dehors* the record,” is good or just—the constitutionality of the act is to be determined by the intent and operation of the act, as they appear from the act itself. So, however bad or impolitic or even corrupt the intent with which an act may in fact have been passed, yet if, in fact, from the act itself, it appears that Congress had power to pass it, such impolicy or corruption would not affect the constitutionality of the act. An abuse of discretion under a power does not destroy the power, but an act done under a power, which, on its face, is not authorized by the power, or which is inconsistent with the purpose for which the power was given as appears from the power itself, is void, however good the motive of the act.

In addition to what has been said in relation to the constitutionality of this bill, I would say, Mr. Chairman, that I question the power of Congress, under the clause of the Constitution giving Congress the “power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States,” to dispose of that territory on the conditions upon which the land is granted to actual settlers by this bill, particularly the condition that the land so granted “shall in no event become liable to the payment or satisfaction of any debt.”

Congress has power to dispose of the public lands; but where does it get the power to grant or dispose of it in fee *upon condition*—upon condition or conditions which may not interfere with State policy at the time of the grant, but which, nevertheless, are to be performed or observed by the settler, as a *citizen of the State in which the land lies*? When Congress grants the land in fee, the land leaves the jurisdiction of the United States, and passes under the jurisdiction of the State in which the land lies. The rules and regulations of real estate; the mode and manner in which it shall be acquired, held, alienated, inherited, or devised; to what extent its alienation or exemption from liability to debt may be restrained or enforced by condition or by contract; to what extent and for what reasons the citizen who parts with all his estate and interest in land, retaining neither a rent or a reversion, shall be permitted by condition to restrain or control the grantee, his heirs or assigns, as to the use, occupation, management, or disposition of the land granted; all these, and almost an infinite variety of other questions relating to real estate, which have been mostly answered by the common law and by the statutes of the several States, are all questions exclusively within the State jurisdictions; and if not already settled by the laws of the State where the land lies, as questions of public policy are to be settled by *laws to be passed by the State*, and not by the conditions upon which the Congress of the United States sees fit to grant the land. It is clear that Congress would have no right or power to grant the land upon condition that the grantee should do, or abstain from doing, any act or thing prohibited or required by the laws of the State in which the land lies, or upon any condition the observance of which would interfere in any way with State policy *as declared by law*—as, for instance, on condition that the land granted should descend only to the heirs male of the grantee, or on the condition that the grantee, or his heirs, never should alien the land to any one; for I presume there is not a State in the Union in which the last of these conditions would not be void, as contrary to the common law adopted by the State, or to a statute of the State defining and prohibiting perpetuities; and in New York, and probably most of the other States, the first would be void as contrary to a statute abolishing and prohibiting *entails*.

One of the conditions on which the land is granted by this bill, viz: that the land "shall in no event become liable to the payment or satisfaction of any debt," would have been void at common law, and would, I think, be void now in a grant by a citizen in any State of the Union. I submit, therefore, that *this condition* is clearly void. But what right or power has Congress to grant the land on condition that it shall not be alienated for five years, or that it shall not be abandoned for six months, or other like condition or conditions, which, though they may not be then contrary to any law of the State in which the land lies, are yet to bind a citizen of that State, and to bind land exclusively within the jurisdiction of that State? What right has the General Government, under this general power of disposition, to erect itself into a *great landlord* and grant the public territory on these conditions, or on other conditions, which may not be contrary to any express law of the State now, or when the settler enters,

yet may become so afterwards from a change of the policy and laws of the State?

This bill excludes from its benefits all foreigners who come here after its passage. Probably in most of the States aliens are not now permitted by a general law to hold real estate. Suppose one of the conditions on which the land is granted to the settler by this bill to be, that he, his heirs, or assigns, should never sell or convey the one hundred and sixty acres to an alien. A B, a settler, enters, occupies for five years, and then takes his patent for one hundred and sixty acres, under the act, in a State which then does not permit aliens to hold real estate; afterwards the State changes its policy, and by a general law permits all aliens to take and hold real estate, is the condition any longer binding on A B? If you say it is, then you permit the General Government to control the State policy by the condition. If you say it is not, then I say the Government had no power in the first instance to annex the condition; because if it had, the *condition must continue* to prevail rather than the State policy.

If the Government has power to restrain by condition the alienation for five years, it has for twenty-five; if it has power to restrain the alienation for any particular period, it has the same power to restrain it to particular persons, or classes of persons; if it has power to restrain the alienation at all, it has the same power by condition to direct the mode or manner of alienation, or of cultivation; if it has power to annex *one* condition to the grant because such condition is not at the time contrary to the laws of the State in which the land granted lies, or in other words, because it would be good in a grant by a private citizen of that State, then it has a right to annex a hundred other conditions for the same reason, and it might thus tie up by condition one half the lands in the State, and for a breach of any one, years after the land had been settled and cultivated, might reënter and resume the possession of the land.

The settler, I think, gets his title under the *act*, on his making the *affidavit and entering*, and not under the patent to be issued to him at the expiration of five years from his entry. If the settler makes the affidavit, enters, and fulfills the condition of continuous occupation and cultivation for five years, his title is perfect without the affidavit of the two witnesses and the patent, specified in the latter part of the second section. If, in fact, the settler performs the conditions of settlement, occupation, and cultivation for five years, and at the expiration of five years, has not alienated the land, his title is perfect, and no power on earth can remove him, or take away the land, though the patent never be issued to him. The patent, it is true, would be conclusive evidence of his performance of these conditions; but it is not his *title*—the act is his title, and not the patent. What is this act, then, in its legal effect and operation? Is not the act itself, in effect, a *grant in fee* to the settler, on certain terms and conditions? If these conditions are not fulfilled, the land and the estate of the settler are forfeited to the United States. By the fifth section, if "it shall be proven by two 'or more respectable witnesses upon oath to the 'satisfaction of the register of the Land Office, 'that the person having filed such affidavit, shall 'have actually changed his or her residence, or 'abandoned the said entry for more than six



'months at any one time, then, and in that event, 'the land so entered shall *revert back* to the Government," &c. How can the land revert back, if it had never been granted to the settler?

Now, take the conditions upon which the one hundred and sixty acres are granted to the settler by this bill, to wit: that of *continuous* occupation by the settler, *personally*, for five years; that it shall not be alienated during the five years that he or she shall not change his or her residence, or abandon the land for more than six months at any one time during the five years; and that the land "shall in no event become liable to the satisfaction or payment of any debt." *For whose benefit are these conditions and restrictions intended?* If really intended, or if in fact they will be for the benefit of any one, it must be either for the benefit of the settler, or of the State in which the one hundred and sixty acres lie, or of the United States as a *landholder*. You cannot say they are intended, or will be, for the benefit of the United States *otherwise than as a landholder*, because such benefit is necessarily included in the benefit to the State, if any, and such benefit to the United States other than as a landholder, can be nothing more than the indirect benefit which all the States receive from whatever benefits any one of them.

Now, I have endeavored to show, from the bill itself, that the one hundred and sixty acres are granted by it for the benefit of the *settler*, and not for the benefit of the United States, or of the State; that they are given to him as a *charity*—to *raise him up* in the world, and to equalize his condition more nearly with those having more property. If, from what has been said, and from the bill itself, it is not now perfectly clear that this is the object of the bill, any doubts will be removed by a brief reference to the grounds upon which this measure has been brought forward and advocated.

Who ask for it? Who demand it? Certain associations, called "*Industrial Congresses*"—offshoots of the *German school of socialism*, and of the American school of "*higher law*" transcendentalism—partly political, partly agrarian. Upon what ground do they ask for it? Upon what ground do they demand it? They ask for it, as a gift, as a charity, to better their condition, and to enable them to live without working, at least for others; and, while they ask for it as a gift, as a charity, they at the same time demand it as a matter of right, for which, even if granted, they will owe no thanks to the Government; for they place their right to it upon the *natural rights of man*, and not upon the Constitution and laws of their country, or the charity of Congress. They ask and demand it upon grounds and theories of the natural rights of man, as I understand them, utterly inconsistent with that great principle, the recognition and security of individual property, which lies at the foundation of all civilized government not only, but of all civilized society; for upon the security of property hangs *industry*, the mother of all arts, of all science, of all wealth; the mother and supporter of all law, order, government; of the virtues and charities of individuals, and of the wealth and power of nations, and without which, the whole earth would be but one moral and physical waste.

On the 21st day of January, 1850, the Hon. I. P. Walker, Senator from Wisconsin, presented to the Senate of the United States "a petition of

citizens of the United States, asking for a reform in the land system, which he desired might be read;" and which was read (as reported in the Congressional Globe, vol. 21, p. 196) as follows:

"The undersigned, citizens of the United States, respectfully represent, that, in their opinion, the system of *land traffic*, imported to this country from Europe, is wrong in principle; that it is debasing us to the condition of dependent tenants, of which condition a rapid increase of inequality, pauperism, misery, vice, and crime are the necessary consequences; and that, therefore, now, in the infancy of the Republic, we should take effectual measures to eradicate the evil, and establish a principle more in accordance with our republican theory, as laid down in the Declaration of Independence; to which end we propose that the General Government shall no longer traffic, nor permit traffic, in the public lands yet in its possession, and that they shall be laid out in farms and lots for the *free use* of such citizens (not possessed of other lands) as will occupy them, allowing the settler a right to dispose of his possessions to any one *not possessed of other lands*, and that the jurisdiction of the public lands be referred to the States and Territories, *only* on condition that *such a disposition* should be made of them. The expelled aristocracy of European despotism are buying up our lands for speculation, while American republicans are *homeless*. The case admits of no delay."

On the 22d of January, 1850, the Hon. Daniel Webster, then the distinguished Senator from Massachusetts, submitted to the Senate a resolution in favor of the policy of granting the public lands to actual settlers, on certain terms and conditions, to which I shall refer more particularly hereafter.

On the 30th of January, 1850, the Hon. SAM Houston, Senator from Texas, presented to the Senate the following resolution:

"Resolved, That the Committee on Public Lands be instructed to inquire into the expediency of granting to each family, (not landholders, or the owners of property worth the sum of \$1,500,) citizens of the United States, or emigrants who are now here, or may arrive previous to the 4th of March next, one hundred and sixty acres of land; and when said families shall have resided upon the said land so granted three years continuously, and shall erect buildings and clear ten acres of ground thereon, a patent shall be issued by the Government of the United States, free of all cost to the grantee."

On presenting this resolution, the distinguished Senator remarked:

"That it was prepared as an amendment to a resolution presented by the Senator from New York, [Mr. SEWARD.]"

After some remarks of the honorable Senator from Texas in favor of his resolution, the honorable Senator from New York [Mr. SEWARD] called for the reading of his resolution, which had been referred to by the Senator from Texas; and the resolution of the Senator from New York was read, as follows:

"Resolved, That the conduct of Austria and Russia, in the war in which these Powers have subverted the nationality and liberty of Hungary, has been marked by injustice, oppression, and barbarity, which justly deserve the condemnation of mankind, while they commend the Hungarian people to the sympathies of other nations, and especially of republican States; and that the Committee on the Public Lands be directed to require and report on the propriety of setting apart a portion of the public domain, to be granted free of all charges to the exiles of Hungary already arrived, and hereafter to arrive, in the United States, as well as to the exiles fleeing from oppression in other European countries."

Now, upon what ground were these resolutions of the honorable Senators from Texas and New York introduced? Did these resolutions propose to instruct the committee to inquire into the expediency of a measure of public policy, or of public charity? For what reasons, from what motives, and for what purpose, were the lands to be given to the Hungarian exiles by the resolution of



the honorable Senator from New York? Was not the resolution of the honorable Senator from Texas prepared as an amendment to the resolution of the Senator from New York? And how could it be an amendment, except by extending the charity of the resolution of the Senator from New York to the Hungarian exiles, to citizens of the United States who were not landholders, and were not worth \$1,500? If from the resolutions themselves you are not satisfied that the objects of the inquiries which they sought, were as to the propriety of the grants of land as a public charity, for the benefit of the Hungarian exiles, and of those who were "dependents on their daily labor for their subsistence," look at the debate which took place on the introduction of the resolution of the Senator from Texas, in which the honorable Senators SEWARD, HOUSTON, DOUGLAS, WALKER, and others took part, (for which see Cong. Globe, vol. 21, part I, 262 to 268,) and I think you cannot fail to come to that conclusion, and that the policy of the proposed grants was mainly advocated and defended on the ground that they would benefit those to whom the lands were to be granted.

On the 18th February, 1851, the honorable Senator from Wisconsin, [Mr. WALKER,] in addressing the Senate in relation to a petition of the Industrial Legislature of the State of New Jersey, said:

"I have been requested to present a petition of the Industrial Legislature of the State of New Jersey, which was lately in session at Trenton, in that State. It briefly reviews the policy which the Government has pursued in the sale of the public lands, and concludes with a prayer that the course heretofore pursued may be abandoned, and that the lands may be made subject to settlement by actual occupants.

"That this question may be understood, I will briefly remark, that the industrial classes of the different States are organizing what they term a *National Industrial Congress*, and in the individual States they are organizing Industrial Legislatures, for the purpose of taking into consideration industrial interests and pursuits; and it is one of these bodies that has sent this petition to Congress. They have intrusted it to me. I introduce it to the Senate, and shall move that it be laid on the table; but, in the first place, I desire to make an observation in explanation of the reason why I shall make such a motion. A great many of these petitions have been sent to me heretofore, and on my motion have been laid upon the table. I have received some letters, expressing some surprise at this, the reason why it was done not being understood. It is known here, and I wish it to be known to the country, that there is a bill upon this subject now pending before the Senate, and under discussion, and therefore the subject is not before any Committee; consequently the petitions are laid upon the table. I wish to say, however, that at the next session of Congress, if the subject be not acted upon and disposed of at the present session, I shall move to take up these petitions, and refer them in the aggregate to the proper committee, that they may give us another report upon the subject." (See Cong. Globe, vol. 23, p. 595.)

At an Anti-Rent Convention, held at Albany, in the State of New York, on the 20th day of March, 1851, among the resolutions adopted by the Convention, were the two following:

"Resolved, That honor and justice to ourselves, as well as that free and manly independence which is the birth-right of every American citizen, demand that we accept of nothing less, and that we will be satisfied with nothing less, than the absolute ownership in fee of the soil cultivated and improved by our labor.

"Resolved, That National Land Reformers and Anti-Renters are one at heart and in principle, and that we cordially recommend that, though having and supporting distinct organizations, they unite in supporting the same ticket."

Now, what is the history of this "homestead

bill," and upon what ground has it been brought forward and advocated?

In looking at the proceedings of the House of Representatives of the last Congress, as reported in the Congressional Globe, I find that the gentleman from Tennessee, [Mr. JOHNSON,] on the 7th of January, 1850, gave notice that he would ask leave to introduce "A bill to provide a homestead of one hundred and sixty acres of the public domain for every man who is the head of a family and a citizen of the United States, or any widow who is the mother of a minor child or children, provided they become permanent occupiers and cultivators of the soil." Mark this title.

On the 21st of February, 1850, Mr. JOHNSON, of Tennessee, asked leave to make a report from the Committee on Public Expenditures, (that committee having heretofore been called.)

Leave having been granted,

Mr. JOHNSON introduced a bill of the following title: "A bill to provide a homestead of one hundred and sixty acres of the public domain to every man who is the head of a family and a citizen of the United States, or every widow who is the mother of a minor child or children, who may become permanent occupiers and cultivators of the soil."

The bill was read a first time by its title.

Mr. VINTON rose and objected. He submitted that the Committee on Public Expenditures had no right to report a bill to dispose of the public lands, &c.

After some debate as to who was to decide the objection, the House, or the Speaker, the Speaker decided that it was his duty to decide it—and he did decide, "that the report made by the Committee on Expenditures was not a report on a subject referred to them by the rules or by the action of the House."

Mr. JOHNSON appealed from the decision of the Chair.

The "decision of the Chair" was affirmed, and the bill was not received."

On the 27th of February, 1850,

"Mr. JOHNSON, of Tennessee, by unanimous consent, introduced a bill, of which previous notice had been given, to provide a homestead of one hundred and sixty acres of the public domain to every man who is the head of a family and a citizen of the United States, and to every widow who is the mother of a minor child or children who may become the permanent occupants and cultivators of the soil; which was read twice by its title.

"Mr. J. said, that his object was to have the bill referred to the Committee on Agriculture.

"Mr. THOMPSON, of Mississippi, moved, as the more appropriate reference, that the bill be referred to the Committee on Public Lands.

"Mr. VINTON, remarking that this bill involved a proposition to give away the public lands of the United States, thought it should go to the Committee on Public Lands.

"Mr. JOHNSON hoped, he said, that the House would permit the bill to go to the Committee on Agriculture.

"The question was then taken on that motion, and was decided in the negative.

"So the House decided that the bill should not be referred to the Committee on Agriculture.

"The question then recurred, and was taken on the motion of Mr. THOMPSON, and decided in the affirmative."

On the 4th of March, 1850,

"Mr. JOHNSON, of Tennessee, gave notice that on tomorrow, or some future day, he would introduce a bill of the following title, viz: "A bill to encourage agriculture, and for other purposes."

Mark the title.

On the 4th of June, 1850,

"Mr. JOHNSON, of Tennessee, asked the unanimous

consent of the House to introduce a bill, of which he had given previous notice, for the purpose of referring it to the proper committee.

"The title of the bill was read, as follows:

"A bill to encourage agriculture, and for other purposes."

"No objection being made, the bill was received, twice read, and referred to the Committee on Agriculture."

In the report of the proceedings of the House, on the 25th of July, 1850, is the following:

"HOMESTEADS.

"Mr. YOUNG, from the Committee on Agriculture, to which the bill of the House to encourage agriculture, and for other purposes, was referred, reported the same back, with sundry amendments.

"Mr. JOHNSON, of Tennessee, then addressed the House at length, in explanation of the objects contemplated by this bill. He looked upon it as a measure of great importance. Five years ago, he had introduced a similar proposition, to give to every citizen, the head of a family, a portion of the public lands, for the purpose of settlement, and on which he might establish for himself a home. There were many gentlemen who, at that time, regarded the plan as impracticable, and as unlikely to lead to any useful results; but since that time, the public mind had taken up the subject. It had been widely discussed out of doors, and Congress had, at various periods, made liberal donations of the public domain in aid of public institutions, and in recompense for public services. He now came forward and asked for a participation of this bounty, in the name of the common man, who, by his toil and sweat, had quietly and effectually contributed to the support of the Government. For that class of our citizens he desired to ask that they also may come in for a share of these public lands," &c.

At the conclusion of his speech, of which the above is the first paragraph only, as reported in the Globe, the gentleman from Tennessee gave notice that he would, at the proper time, move to amend the title of the bill by adding thereto the following:

"And to provide a homestead of one hundred and sixty acres of the public domain for every man who is the head of a family, and a citizen of the United States, or any widow who is the mother of a child or children who may become permanent occupants and cultivators of the same."

Thus, the honorable gentleman from Tennessee, by giving his bill the "soft insinuations" of a bill to "encourage agriculture," &c., had succeeded in having it referred to the Committee on Agriculture, and when it comes back to the House from that committee, he takes the first opportunity to give notice that he intended to restore the original title which the bill had when the House refused to refer it to the Committee on Agriculture, and did refer it to the Committee on Public Lands; and which amendment having been made subsequently as an addition, and not as a substitute for the title which the bill had when it was referred to and came from the Committee on Agriculture, has produced that strange inconsistency between the title and the provisions of the act which I have before pointed out, in stating my objections to the title of this bill.

I shall conclude this reference to the proceedings of the last Congress in relation to this measure or policy with one or two extracts from the speech of the gentleman from Tennessee, before referred to, as I find it in the Appendix of the Globe.

After sending it to the Clerk's table the amendment to the title of the bill to be read—

"Mr. J. continued, by saying that this amendment made the title of the bill complete; that this was the original christening of the proposition now under consideration, and had been merely changed by himself to 'a bill to encourage agriculture, and for other purposes.' He said he had made this explanation for the purpose of letting the House and the country know that this was nothing more nor less than the naked, clean proposition to provide every man, who is the head of a family, with a homestead of one hundred and sixty acres of land, thereby encouraging agri-

culture, increasing commerce, and widening the market for the agricultural products of the country; but he did not intend to enlarge upon this branch of the subject in this connection, but he intended to march directly up to the consideration of the general principles of the bill.

"He then sent to the Clerk's table, and had read the following authorities: Leviticus, chapter 25, verse 23—'The land shall not be sold forever—for the land is mine—for ye are strangers and sojourners with me.'"

Mr. J. then had read extracts from Vattel's Law of Nations and from President Jackson's Annual Message to Congress in 1832, which I will not read, but which will be found in the report of his speech in the Appendix to the Globe:

"Mr. J. continued, by saying that he thought Moses, Vattel, and Andrew Jackson, made a sure foundation, on which he was willing to stand, without regard to any other authority. He had introduced these great names for the purpose of satisfying that portion of society who were skeptical in a great reform proposition like this, and who would not take the time and trouble to investigate and think upon the principle involved. Mr. J. contended that the Government had no authority, neither under the Constitution, nor in compliance with the four great elementary principles indispensable to the existence of man, to withhold the use of its soil from its citizens. Man cannot live without the use of the soil; and Government cannot, in compliance with first principles, withhold the essentials of life from the people. The Government, whose legislation is directed against these first principles, is making war upon the great scheme of Deity himself, and reduces its operations to practical infidelity. If legislation was made to take this direction, we might hail it as the beginning of the millennium morn, when we should have 'peace on earth, and good will among men.'"

The gentleman from Tennessee then proceeds in his speech to point out certain advantages which he thought would follow from the measure, both to the Government and to the settler; but I think no other inference can be drawn from the whole speech than that he had brought forward and advocated the measure as a "great reform proposition," to provide a homestead for those having none, but who had a right to one, "in compliance with four great elementary principles," and on certain principles of natural right and justice, which, I confess, I do not fully understand.

What have been the most conservative arguments here this session, in favor of this "great reform proposition," other than to show that the public welfare would be promoted, by giving and providing at the public expense, out of the public domain, a homestead and a home for those having none, and had not the means to buy one?

Upon what ground have others put the duty of the Government to grant, and the right of those having no land to ask, this homestead? I will let the gentleman from Ohio [Mr. CABLE] speak for himself. In the speech made by him on this bill on the 11th of March last, he says:

"My friend from Tennessee, on a former occasion, quoted, as authority on this point, from Moses, Vattel, and Jackson—all good authority, authority not to be questioned in this enlightened day; but he might have gone further—gone with the venerable John Q. Adams, while discussing our title to Oregon, back to the Pope. Yes, he might have gone still further, and proven the original title in man from his creation, bestowed by God himself upon the whole human family—not the few! Then first of all to the Bible—that book of books—which declares that, 'In the beginning God created the heavens and the earth; and there was not a man to till the earth.' \* \* \* Again, 'He formed man out of the dust of the earth; and breathed into his face the breath of life, and man became a living soul.' After his creation, as 'male and female,' man was directed to 'fill the earth and subdue it.' 'And the Lord God sent him (man) out of the Paradise of pleasure—the Garden of Eden—to till the earth from which he (man) was taken.' Again: 'In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it thou wast taken: for dust thou art and unto dust shalt thou return.'"



"By these quotations two things are proven. First: that *man* (speaking *alone* of his mortality) is of the earth, belongs to the earth, and, by God's decree, the earth to him while he lives, and when he dies his body *returns to the earth of which it is formed*. Man cannot live in the air above the earth, nor under the earth; but if he lives at all, he must live on the earth, and sustain life by feeding upon its production. Those, if such there be, who will not accede to the Bible doctrine on this point, will find its truth fully demonstrated in modern science. In analyzing the earth it is found to be composed of silica, alumina, peroxyl of iron, carbonate of lime, magnesia, soda, phosphoric and sulphuric acids, &c. &c. And when the *human body* is analyzed, it is found to be composed of *precisely* the same properties, only varied in proportions and somewhat refined. These facts fully confirm the Bible doctrine, that "Thou shalt till the earth, until thou return to it, from which thou wast taken." Then withhold not from thy brother what God had bestowed upon him *before* 'thou wast.' Secondly, the foregoing quotations, with their contexts, prove man's *inalienable* connection with the earth. For, if you dissolve the body—if you burn it to ashes in the *center*, and scatter them to the four winds of heaven—if you anatomize it, do with it what you will—the *body returns again to the earth from which it was taken*. Consequently, there is no retreating from the fact, that man has an inalienable right to so much of the earth, at least, as will yield him and his household all the necessities and comforts of life, by industry and application; just as man has a right to life, to the air, the rays of the sun, or the water from the earth. It would be insolent mockery to say to a man, Live, while you deny him the means of life; to say to him, Pursue happiness, while you bind him hand and foot, and put a gag in his mouth. And a Government, a Congress, an Administration, that withholds this right to the soil—a right conferred by God himself on all, "high and low, rich and poor"—from any portion of the people, is guilty of usurpation, tyranny, and fraud.

"Moses prophetically declares that 'the land shall not always be sold'; and this prophecy will be fulfilled on this continent, sooner or later."

Now, it is very clear to me that the honorable gentleman from Ohio had not read Humboldt's "*Cosmos*," when he made this speech. Humboldt, in his *Cosmos*, I think, says that the earth itself was originally nothing but a gaseous fluid, or body, revolving in ethereal space, and which had gradually become condensed, by motion or otherwise. If this was so, then by this reasoning of the gentleman from Ohio, man has no more exclusive right to land than he has to the "air he breathes." If the gentleman had gone this one step further in his argument, I should have called it the *gaseous, or ethereal* argument in favor of the homestead bill. And, after my friend from Ohio had taken that step, I do not know but he could have gone even one step further; and, by applying Bishop Berkeley's theory of matter, to morals, might have arrived at the very satisfactory conclusion, that *whatever is, is; and whatever is not, is not*—which, I think, would have been the end of the argument.

Now, having shown, beyond question, as I think, both from the bill itself, and from the grounds upon which it has been asked for, brought forward, and advocated, that the one hundred and sixty acres are to be granted as a charity, for the supposed benefit of the settler, and not as a measure of public policy, to promote the public welfare; I now resume my argument to show that *Congress has no right or power to annex to the grant the conditions of continuous occupation for five years; that the land shall not be alienated to any one for five years; and shall not ever be liable to the payment or satisfaction of any debt*,—by repeating the question, *for whose benefit are these conditions and restrictions intended?* They cannot be for the benefit of the United States, as a landholder or otherwise. If the United States is to be bene-

fited in any way, it is by the settlement and cultivation, and the more land there is settled under the bill the better. But these conditions are burdens upon the settler; a restraint upon him; and will prevent many settlers from accepting the gift. It would, therefore, be for the advantage of the United States to have them stricken out; for, without them, she would have more land settled and cultivated, and that sooner.

It is evident that these conditions are put in the bill, and are intended for the benefit of the settler, under the mistaken notion that it is best for the Government, *in this way, to take care of the future moral and pecuniary condition of the settler*. It is against this I protest, as an insult to the settler, and a questionable exercise of power on the part of the Government. The one hundred and sixty acres are given as a charity, and these conditions are to *enforce* the charity; to compel the settler to keep the homestead whether he will or no; to protect him against his own indiscretion in getting into debt. By these conditions the Government virtually says to the settler, "Now, sir, you are old enough to be the 'head of a family,' but you have not got along very well in the world; you have no land, and not even five hundred dollars worth of property; now, we will give you one hundred and sixty acres of land, but we can't trust you; you shall not sell it for five years, and you shall never get in debt hereafter, and shall not take the land to pay any of the debts you now owe." To me it appears that these conditions are put in the bill upon precisely the same principle upon which the good mother takes her little boy, gives him a large piece of bread and butter, and to prevent him from going into the street and trading it for the marble or tin trumpet of his playmate, *ties him in a chair till he eats it up*. These conditions, then, are intended for the benefit of the settler; they must be intended either for the benefit of the settler or of the State.

But *what right has the General Government, under this power in the Constitution, to dispose of the public lands, after it has granted to the settler all its estate and interest in the land as a landholder; thus to control by condition or conditions the settler, or his alienation or disposition of the land; either for the benefit of the settler or of the State?*

As for the State, it has a right to judge for itself in this matter; as to the settler he has the right to occupy, cultivate, alienate or dispose of the land in any way, to any person or persons, or at any time, *not inconsistent with the laws and constitution of the State*—he has the right to judge for himself, *except so far as he is restrained by the laws of his State*. It would be easy to show, I think, that at common law, a party granting all his estate, retaining no estate or interest, either as reversion or rent, would have no right, *for the benefit of the grantee*, to bind him or his heirs, by either of the conditions on which the land is granted by this bill. (See Co. Litt., 223a; 4 Kent's Com. 131.) It would have been held to be "absurd and repugnant to reason," that he who had parted with all his estate and interest, should thus restrain the grantee or his heirs. I by no means say that the common law is of greater force than the Constitution, or that it is of any force at all, where the Constitution speaks plainly and unequivocally. But this is a question of construction, and it appears to me that the reasons given by the common law for the



rule, ought to have some weight on this question of the power of the Government, thus to tie up the citizens of the States. The power or right to annex these conditions does not seem at all to follow from the general power in the Constitution to dispose of the land. Who would think that an ordinary power of attorney from one citizen to another, or a power in a will to the executor, to sell and dispose of real estate in fee, would authorize the attorney or executor to annex like conditions in a grant for the *benefit of the grantee*?

There are nearly fourteen hundred millions of acres of the public domain—a vast territory, sufficient to make many more States. This bill is now popular; it is brought forward as a popular measure. Let this bill pass, and by it, and by other similar measures, most of this immense domain will pass from the control of the United States, except so far as the Government shall attempt to control it and its tenants, by these or similar conditions. In my judgment, the power thus to control the land and its occupants, would be dangerous to State rights, and might lead to interminable difficulties between the General Government and the States.

III. But admit that Congress has the *right and power* to grant the land on these conditions; is it *politic* for Congress to do so? I hold that it is not. I hold the conditions upon which the one hundred and sixty acres are granted to the settler by this bill, to be both *impolitic and inconsistent*; impolitic, looking at the grant of the land to the settler as a measure of public policy; and inconsistent with the object of the grant, looking at it as a measure of public charity, or of political benevolence. I hold these conditions and restrictions to be as unwise as they are unjust; an unnecessary infringement of the liberty of the citizen, not only uncalled for by, but positively injurious to the public interest, as proved by the experience of ages. Land best answers its purpose, when it is freely alienable—when it is freely a thing of commerce. The common law—the maxims and rules of which must be supposed to have originated from public convenience or public policy, as proved from experience—made certain conditions in a conveyance in fee void, which interfered to a certain extent with this policy of free alienation. Hence in a conveyance in fee, by which the grantor parted with all his estate and interest, a condition that the grantee should not alien to any was void. (Co. Litt., 223a.) Hence the rule in the famous case of Shelley, (1 Co. R. 9:.) which was, “that ‘when the ancestor, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited mediately, or immediately, to his heirs, or the heirs of his body, that the words ‘heirs,’ &c., are words of limitation ‘of the estate, and not words of purchase;’ for if the heir had taken as purchaser, the fee would have been in abeyance during the life estate, and the alienation of the fee suspended until the termination of the life estate. (See 3 Rev. Stats. of New York, 563 to 579, reviser’s notes.) Hence the contest between the common law judges in Lord Coke’s day, and the statute “De Donis” of 13 Edward I.; which statute was passed to enable the great lords and landholders to keep their lands perpetually inalienable in their families. Hence the statute of 12 Charles II., abolishing the burdens of the military tenures of the feudal system,

and with them the “fine for alienation.” Hence in New York, and in most of the other States, probably, a statute “abolishing entails.”

In speaking of certain restraints of this right of free alienation and use of property, Lord Coke held them to be “absurd and repugnant to reason and to the freedom and liberty of freemen,” and cites this maxim, “*Iniquum est, ingenuis hominibus non esse liberam rerum suarum alienationem*”—(Co. Litt., 223 a.) This maxim embodies a great principle of human liberty, not only in the disposition of property, but in the regulation of moral conduct; and deserves the serious consideration of the advocates of the “Maine Liquor Law,” and of certain other legislative moral reform movements of the day, as well as the consideration of the advocates of this bill, and other land bills of this session, containing conditions in restraint of the free use and disposition of the lands granted.

No doubt, at common law, in leases for life or years, where the lessor retained a reversion in the lands granted; and even in leases in perpetuity or fee, where the lessor retained, by way of rent, an estate or interest in the land equivalent to a reversion; such conditions were permitted, and held to be legal; but this was upon the ground that the lessor did not part with all his estate, and interest in the demised premises. (See Sir Anthony Mildemaye’s case, 6 Co. 41; Co. Litt. 223a.; 4 Kent’s Com. 131.) And now in New York, and probably in all the States, any condition in restraint of alienation in such leases, would be held valid, which did not so far restrain the alienation as to create a perpetuity as defined and forbidden by the laws of the State in which the demised premises were. Yet, the “abhorrence of a perpetuity,” and of these restraints upon the free use of property which the common law had, as shown by its rules and maxims, a few only of which I have before referred to, and the laws of the States abolishing entails, and preventing the alienation of the fee from being restrained beyond the term of one or more lives, or a certain term of years, plainly show, that it has hitherto been thought, that these restrictions upon the free use and sale of land were impolitic, and that land best answered its purpose, when it was freely a subject of traffic, and its owners and holders could occupy and cultivate it, or part with it freely, *when and as they chose*.

At common law, when an individual, by grant or devise, parted with all his estate and interest in the land, he might, for the benefit of himself, or of his heirs, or of a third party, where there was a grant or devise over, annex any reasonable condition to his grant or devise; but I question whether a case can be found in the books, where in such grant or devise of all the estate and interest of the grantor or deviser, and where there was no grant or devise over, on failure of performance; any condition restraining or controlling the grantee or devisee, as to his or her occupation, cultivation, or alienation of the land, has been held valid, upon the ground that such condition or conditions were annexed for the benefit of the grantee or devisee, and the performance of it, enforced for his benefit. The law would pronounce such restraint absurd, and, in the language of Lord Coke, as “repugnant to reason and to the freedom and liberty of freemen.”

Now, I have shown that by this bill the United

States parts with all its estate and interest in the land as landholder; on *certain conditions* it is true. But I have shown that these conditions are intended for the benefit of the settler; and whether intended for the benefit of the settler, the State, or the United States, upon what principle are they imposed by *this Government* on the settler? If the policy and principles of the common law opposed such restrictions, even in a private grant or devise, as a useless infringement of the "liberty of freemen," how impolitic, how inconsistent, not only with the declared object of this bill, the benefit of the settler, but with the declared object of this Government, "to secure the blessings of liberty," for it to introduce these and similar conditions into its grants of the public domain. The common law and statutes of the States forbid that the alienation of *one farm* shall be restrained beyond the term of one or more lives, or a term of years;—this bill restrains *voluntary* alienation by the settler for five years only, but it restrains *millions of settlers and millions of acres* for five years, and it restrains any *involuntary* alienation by judgment and sale under an execution, or by mortgage, forever. This new policy of the Government is introduced for the pretended benefit of the settler, of the State, or of the Government, one or all—as such I have been looking at it. But if the real object of inserting these conditions is, Mr. Chairman, to quiet the constitutional scruples which some might have to disposing of the public lands as a *gift*, as a *gratuity*, for the benefit of a certain class of citizens, or of certain States only, by *hampering* the gift and its receiver, and thus rendering the gift the less valuable; if these conditions and restraints are inserted in the bill merely for the purpose of argument, to give the measure the *color* of an act of public policy, and thus procure its passage; if they are never to be enforced, or the settler and the land are hereafter to be released from them by legislation; why then, those who have brought forward or advocated this measure with this intention, must choose between the impolicy and inconsistency of these conditions, and the hypocrisy of thus procuring the passage of the bill under false pretenses. But I make no charge against any one of having any such improper or concealed motives, either in bringing forward, or in advocating the "homestead bill." I believe the author of it honest, but mistaken in his views of the policy of the whole measure, and especially as to the policy of these restraints and conditions. It is possible he or the Committee on Agriculture may have been misled by the authority of great names; for the resolution submitted by Mr. Webster, in the Senate of the United States, on the 22d of January, 1850, in relation to the public lands, to which I have before referred, contained a condition that the settler and his heirs or devisees should *never alien the land except by devise*. The resolution was as follows:

"Resolved, That provision ought to be made by law that every male citizen of the United States, and every male person who has declared his intention of becoming a citizen, according to the provisions of law, of twenty-one years of age or upwards, shall be entitled to enter upon and take any one quarter section of the public lands which may be open to entry at private sale for the purposes of residence and cultivation; and that when such citizen shall have resided on the same land for three years, and cultivated the same, or, if dying in the mean time, the residence and cultivation shall be held and carried on by his widow, or his heirs, or devisees, for the space of full three years from

and after making entry of such land, such residence and cultivation for the said three years to be completed within four years from the time of such entry; then a patent to issue for the same to the person making entry, if living, or otherwise, to his heirs, or devisees, as the case may require: *Provided, nevertheless*, That such person so entering and taking the quarter section, as aforesaid, shall not have, nor shall his devisees or heirs have, any power to alienate such land, nor create any title thereto in law or equity, by deed, transfers, lease, or any other conveyance, except by devise, by will."

Now, Mr. Chairman, this resolution was submitted not by way of inquiry, not as a question of policy to be investigated, but by it Mr. Webster expressed his deliberate opinion that the hundreds of millions of acres of the public domain ought to be given to actual settlers on condition of occupation and cultivation for three years, and on condition that the land so given away should never be alienated except by devise—a policy which, if adopted and carried into a law, would in time take out of commerce, of sale and purchase, and render perpetually and wholly inalienable, except by devise, half of the territory of some of the States lately admitted into the Union; and the greater part, perhaps the whole, of the territory of States hereafter to be formed and admitted into the Union—a policy utterly at war with the whole spirit and policy of the common law, as perfected and settled by the experience of ages, and with the policy of State legislation, in every State in the Union—a policy similar to that which induced the great lords and landholders of England, in the reign of Edward I., to procure the passage of the statute "De Donis," to enable them to perpetuate and render inalienable in their families their lands, but which statute was met by the sturdy resistance of the English common-law judges in favor of English freedom; and after a contest carried on between the statute and the judges, during the reigns of Edward IV., Henry VII., Henry VIII., and into the reign of Elizabeth, was finally, by what Chancellor Kent calls (4 Kent, Com. 13) "a bold and unexampled sketch of the power of judicial legislation," effectually defeated by the judges.

I object, Mr. Chairman, to all attempts by legislation to control the citizen in the management or disposition of his property, or in the management or regulation of his moral conduct, unless called for by the most imperious considerations of public policy, whether they come in the form of the conditions of this "homestead bill" or of the "Maine liquor law," or of any other modern, popular, legislative, moral reform measure. Strange it is that those who are eternally talking about the intelligence of the people, should thus openly repudiate that intelligence, and proclaim to the whole world that a free American citizen is not to be trusted with his own affairs; that a man worth less than five hundred dollars, or having no land, does not know enough to take care of one hundred and sixty acres of land; does not know when it is best for him to sell; or whether it is best for him to borrow money or not; or when, and what, and how much it is best for him to drink;—that the same man who is trusted with a vote which may rule the destinies of twenty-five millions of people, is not to be trusted with one hundred and sixty acres of unimproved land, or a bottle of wine. Strange that extreme Democracy has a tendency thus to run into extreme tyranny; that this Government, by inserting conditions and restrictions in its grants of land, should substan-



tially claim the ancient prerogatives of the King of England as the great lord or proprietor under the feudal system of all the lands in the kingdom; for does not the Government, by these conditions and restrictions, say to the settler, you shall not sell, you shall not leave your farm for more than six months at any one time, you shall not mortgage it, you shall not incur a debt *without our permission*; and what is this but a republican imitation of the "fine for alienation," abolished by the statute of 12 Chas. II., and of others of the worst features of the feudal system? I believe the people know best how to manage their own affairs. If I gave them the land, I would give it to them out and out, "in the simplest and most unembarrassed form," as Mr. Webster would have done in 1837, as appears from a speech of his made in the Senate of the United States on the 11th of February, 1837, on Mr. Calhoun's bill to cede the public lands to the States in which they lie, which will be found in the fourth volume of Congressional Globe and Appendix, page 157 of Appendix.

#### OBJECTIONS TO THE "HOMESTEAD BILL" NOT APPEARING ON ITS FACE.

Having stated, Mr. Chairman, the most prominent objections to the "homestead bill" appearing on its face, I now proceed to state, as briefly as possible, certain other objections to the bill, considering it as a question of *public policy*, and not as a question of *constitutional right or power*; which objections arise and derive their force from the past policy and legislation of the Government, in relation to the public lands; from other land measures now pending before Congress; and from other facts and considerations which do not appear on the face of the bill.

Before proceeding to state these objections, however, one word with regard to public policy. What is public policy—is it not the general welfare? To ascertain what this public policy, this general welfare is, must you not look at the East as well as at the West; at manufactures as well as at agriculture; at all the great interests of the Union? Is not public policy the greatest good to the greatest number? Is not every constitutional act of Congress, even an act for the payment of a private claim, necessarily to be taken as an act of public policy; for is it not for the public welfare; is it not public policy for the Government to be just?

Looking, then, at this "homestead bill" as a question of *public policy*, to be settled by considerations not appearing from the bill itself, I say that I object to the bill:

I. Because the land measures of this session of Congress, especially the "homestead bill," will be injurious even to the land States, by vastly increasing the evil already felt and complained of by those States; that is, of large tracts of land in those States being held, unimproved, by speculators and large capitalists;—or the land States, to get rid of the evil, will by taxation force those lands from the speculators and capitalists to themselves, and thus through these land measures and the unlimited power of State taxation, indirectly and without compensation, unjustly acquire from private citizens the lands which those citizens have been induced by the past policy of the Government to purchase, and which the Constitution

had not authorized the Government to grant directly to these States as a gratuity. In other words, these land measures will enable the land States to take, and they will take, without compensation, but under the form of State law from the citizen, the grantee of the Government, the land which they could not constitutionally get as a *gift* from the Government; or they will aggravate the very disease for which they are now asked as a remedy, not only by adding to the immense number of acres of *unimproved* land in those States heretofore disposed of by the Government, and now owned and held by private persons, corporations, &c.; but by compelling the smaller and less independent proprietors of such land to escape State taxation, to sell out at depreciated prices to large capitalists and millionaires, who may be able to pay the taxes and hold on to the land; and who may be induced at nominal prices to purchase large tracts of this unimproved land over which the General Government has lost its control, either from the abundance and cheapness of money, or from the ambition or vanity of becoming large landholders or landlords.

One or the other of these results, or both, partially, in my judgment, Mr. Chairman, will inevitably take place from this most extraordinary policy of throwing the public lands into the market, by millions of acres at a time, vastly in advance of the demand for actual settlement and cultivation.

If these land measures have any legitimate and defensible object, as measures of public policy, that object is the settlement and cultivation of the unimproved land in the land States and Territories; to *hasten* their settlement and cultivation. It is evident that it is wholly immaterial to the question of public policy or public welfare, which lands are *first settled and cultivated*—the lands heretofore disposed of by the Government, or the lands to be disposed of by the land bills brought forward and to be brought forward at this session of Congress. The country is to be enriched, the public welfare to be promoted, if at all, by the additional number of acres of land to be cultivated and improved. It can make no possible difference *when* the land was disposed of by the Government, or whether it belongs to the State, a railroad company, or an individual.

It appears to me that this whole question of policy and of anticipated benefits, even to the land States, from the "homestead bill," railroad bills, and other schemes for getting rid of the public lands, now before Congress, depend, in a great measure, upon two things, which have been wholly overlooked in this discussion of the land question. One is, the *quantity of unimproved land in the land States, now in the market, not belonging to the United States, but which has been heretofore disposed of by the Government*. The other is, the *probable demand for land in the land States for actual settlement and cultivation*, for some years to come, say fifteen or twenty years. It is evident that you cannot settle and cultivate the land without settlers. Where are they to come from, and how many will you have annually to settle the lands?

Make your calculations; say you have a certain number—the persons, "the heads of families," whom this "homestead bill," this bonus of the Government, induces to settle on the lands disposed of by that bill—you will not have to settle



on the unimproved lands heretofore disposed of by the Government, or on the lands to be disposed of by the railroad bills. If there is a vast amount of unimproved land heretofore disposed of by the Government in the hands of private persons, companies, and corporations, will you not, by the proposed land grants of this session, retard the settlement of those lands, the demand of lands for settlement and cultivation being limited by the ratio of increase of our population? And thus will not the passage of any one of these land bills render it impolitic, or at least *less politic*, to pass another? This whole question has been argued as if we had a *surplus population*; as if we had fifty millions of men ready and waiting to take immediate possession, not only of the lands to be disposed of by the "homestead bill," and of the lands to be granted for railroads, but also of the unimproved lands heretofore disposed of by the Government, whereas the truth is, the public lands have been heretofore thrown into market by the Government vastly in advance of the requirement for settlement and cultivation from the increase of our population from all sources. What have been the consequences? Depreciated prices. The lands have passed into the hands of speculators, and are held by them in large tracts, unimproved, to the great injury, no doubt, of the new States, and to the ruin of thousands who have found themselves unable to hold on to their lands and pay the State taxes. Such were the consequences of the enormous sales of public lands in 1835 and 1836. Since then, especially within the last five years, an immense number of acres of the public lands have been given away by the Government, as bounties for military services, for railroad, and other internal improvements, and for various other purposes. Now, it appears to me that the sure effect of this "homestead bill;" of the *indiscriminate* grants for railroads, and of grants for certain other purposes of the public lands, proposed at this session, will be to greatly increase the evils which followed this mistaken policy of the Government, and which are now complained of by the new States; for while, by the railroad bills and other bills granting lands to States, or companies, for purposes of internal improvements, education, &c., you will add not less than two hundred millions of acres to the vast number of acres of the public lands which have been disposed of by the Government, but which remain yet uncultivated and unsettled; yet, by the "homestead bill," and by certain bills graduating the price of the public lands, you will take away or absorb from the lands to be granted by these railroad bills, &c., and from the lands heretofore disposed of by the Government, the market, the demand for settlement and cultivation, arising from the increase of our population.

What is to become of this immense amount of unimproved, wild land? It cannot be settled in a great number of years; the small capitalist or land owner cannot hold on to his and pay the taxes; those indebted for their lands cannot hold on to theirs; it is thrown into market; the actual settlers will not buy it because they can get land of the Government, under the "homestead bill," for nothing, or under the bill graduating the price of the public lands for twenty-five cents an acre. Where will the land go? It will pass, by sale and purchase at nominal prices, into the hands of large capitalists, *who can hold on to it*, or into the hands

of the State in which it lies, under a sale for unpaid taxes.

An over supply of land, like that of every other commodity, lowers the price. A, has a thousand bushels of wheat, or one hundred horses; he takes them to market, but he finds, on reaching the market, that the Government, or some rich man, in a fit of charity, has sent to that market, to be distributed as a gift or charity, a sufficient number of bushels of wheat or of horses to supply that market with wheat or horses for years to come. What will A do with *his* wheat or horses? He cannot sell them to those who then happen to be in want of wheat or horses; they will not *purchase* that which they can take as a *gift* freely and without price. But A cannot *keep* his wheat or horses; perhaps he owes for them; perhaps all his small capital is invested in his wheat or horses. What can he do but sell to the capitalist, *who can hold on*, however long, until the market rises—until the over supply has ceased? but of course A must sell at a ruinous price.

To give full force to my reasoning on this point, Mr. Chairman, it only remains for me to answer these two questions:

1st. How much *unimproved land* is there in the land States and Territories, not belonging to the United States, but which has been heretofore disposed of by the Government of the United States, and is now owned and held by private persons, corporations, companies, and States, and in the market, waiting for sale, settlement, and cultivation?

2d. What will probably be the demand for unimproved land in the land States and Territories, for actual settlement and cultivation, for some years to come, say for the next ten years; that is, how much, what number of acres of unimproved land, would probably be settled within the next ten years, or any other given period, under the present land system, and without reference to the "homestead bill," or to any other land bill or measure of this session?

These questions I shall now answer.

It appears by a table, recently prepared at the General Land Office, by request of my colleague, [Mr. BENNETT,] and which will be found annexed to his printed speech on the public lands, that the land States and Territories contain, in the aggregate, 1,616,935,598 acres of land; and that of these 1,616,935,598 acres, on the 30th day of September, 1851, 1,399,586,140 acres had not been sold or appropriated by the Government, and belonged to the United States. By deducting, then, this 1,399,586,140 acres remaining unsold and unappropriated on the 30th of September, 1851, from 1,616,935,598 acres, the area, you have 217,349,458 acres as the total of acres in the land States and Territories, which had been sold and appropriated by the Government prior to the 30th of September, 1851. This 217,349,458 acres, however, includes 3,400,725 acres, which had been reserved for Indians, and 422,325 acres which had been reserved for salines, amounting together to 3,823,050 acres, which, deducted from 217,349,458, leaves 213,526,408 as the total of acres in these land States and Territories, that had been *sold* and *granted* by the Government up to the 30th of September, 1851, including 7,123,903 acres of confirmed private claims, but exclusive of about 4,000,000 of acres of the Chickasaw Indian cession

in Mississippi and Alabama, (ceded to the United States in 1832 and 1834, to be sold by the United States for the benefit of the tribe,) and of which about 4,000,000 acres had been sold up to the 30th of September, 1849, as appears by the report of the Commissioner of the Land Office of that year. This 4,000,000 added to the 213,526,408 makes 217,526,408, as the total of acres in the land States and Territories, sold and granted by the Government up to the 30th of September, 1851, including the private claims confirmed by the Government as before stated.

Now, it appears by the last census, that the total of acres of improved land in all the land States and Territories, was 37,450,699 acres; which, deducted from 217,526,408 acres, the total of acres so sold and granted by the Government, leaves 180,075,709 acres, as the total of acres of unimproved land in the land States and Territories which had been sold or granted by the United States, or the private title and claim to which had been confirmed by the United States prior to the 30th of September, 1851.

But this 180,000,000 acres includes only about 16,000,000 acres, the number of acres *actually located* under bounty-land warrants prior to the 30th September, 1851, and does not include about 46,000,000 of acres, the probable number of acres thereafter to be located under the Mexican war bounty land act, the war of 1812, and under the bounty land act of September 28, 1850.—(See report of Secretary of Treasury, December, 1850, and table K, appended to that report.) Nor does this 180,000,000, of course, include the 20,000,000 of acres in addition, which will probably be required to satisfy that provision in the act passed at the present session, making land warrants assignable, which extends the bounties of the act of September 28, 1850, to the militia volunteers of any State or Territory whose services have been paid by the United States. Add this 46,000,000 and 20,000,000 of acres yet to be located under the different bounty land acts, to the 180,075,709 acres which had been sold and disposed of by the Government, as before shown, and you have 246,075,709 as the total of acres of *unimproved* land in the land States and Territories which have been actually disposed of by the United States, and which are now owned and held by private persons, corporations, companies, and States, waiting for settlement and cultivation, and which are to be sold, and ought to be sold to actual settlers; and the owners of which are now, and will continue to be, competitors of the United States as a landholder not only, but will be competitors of the States, railroad companies, and other grantees of the lands to be disposed of at this session of Congress, by grants for railroads and other purposes, in the land market of the West.

By the last census it appears there are only 112,042,000 acres of improved land in all the States and Territories. There are, then, now, or soon will be, in the land States and Territories, under grants of the Government, heretofore made and by virtue of laws already passed, in the hands of private persons, corporations, companies, and States, of the finest and best unimproved land the sun ever shone upon, more than double the number of acres there are of *improved* land in the whole United States, including all the States and Territories.

How long will it take to settle this 246,000,000

of acres of unimproved land which has been disposed of by the Government? Allowing eighty acres to each settler, it will take three millions of farmers to settle it—more than double the whole number of farmers now in the United States—as shown by the last census. Call the free white population of the United States now, twenty millions; allow the same ratio of decennial increase for the next thirty-three years, that the last census shows for the ten years prior to 1850, which is thirty-eight per cent.; of this increase for the next thirty-three years, take one thirteenth for settlers, which is about the per cent. of the free white population of the United States who are farmers or landholders, as distinguished from freeholders, as shown by the last census; and you will find by a calculation easily made, that the *whole increase* of the free white population of the United States for the next thirty-three years, will not supply settlers sufficient to settle this 246,000,000 acres of unimproved lands.

Of the 180,075,709 acres of unimproved land, which had been sold, and granted, and *located* under bounty land warrants, up to the 30th September, 1851, as before stated, it appears that—

Missouri has.....	13,653,150 acres.
Illinois.....	22,177,784 “
Indiana.....	15,512,013 “
Iowa.....	6,230,917 “
Wisconsin.....	8,899,741 “
Michigan.....	14,139,757 “
Arkansas.....	10,336,146 “
Alabama.....	10,053,008 “
Mississippi.....	17,567,871 “
Louisiana.....	14,600,053 “
Florida.....	4,736,111 “

Making.....137,936,551 “

of unimproved land in these States alone, (besides that yet to be located under the different bounty land acts,) *not belonging* to the United States, but to the grantees of the United States. And yet these States come forward at this session of Congress and demand grants of the public lands for railroads, to the extent of thirty or forty millions of acres; and also, through their Representatives, appear here as the strong advocates of the “homestead bill,” a measure which must necessarily prevent the sale and settlement, not only of this 137,936,551 acres of unimproved land, which has been disposed of by the Government, but of the lands which they now ask for railroads. This is not all. Our admiration is wonderfully increased in view of all this, when we look at the *reason* given to prove the constitutional power and right of the Government to grant these lands, not only to the States for railroads, but to the settler for a home, as a gift or gratuity, viz: that the Government will be benefited as a *landholder*—that the public lands retained by the Government will be increased in *value* and command a *more ready sale*—that is, that the Government with this immense amount of unimproved land owned by others, now in competition with the lands of the Government, will increase the price, and hasten the sale of *its land*, by *increasing the competition*. Can any one doubt that it is a discovery; a new principle of political economy, that a *surplus increases price*—and when you add to this, the other discovery, that by creating this surplus by *gift or charity*, you still further in-



crease the price and quicken the sale, our admiration must also be increased?

Now, as to the other questions—*What will be the future demand of land for actual settlement in the land States? &c.*—any answer must be, of course, problematical. We can only judge of the future from the past. What, then, has been this demand? What number of acres of unimproved land in these land States, &c., have been actually settled for the ten years next preceding 1850? We will take the same eleven land States last named. The whole population of these eleven States was, in 1840, 3,302,944; in 1850, 5,609,983. The increase, therefore, for the ten years, as shown by the abstract of the census returns of 1850, lately published, was 2,307,049, and the ratio of increase for the ten years about seventy per cent., (sixty-nine and a fraction.) By the same abstract, it appears that there are 27,363,850 acres of improved land in these eleven land States; and by a table which will be found in the speech of the gentleman from Pennsylvania [Mr. Dawson] on this homestead bill, made out by him from the returns of the census of 1850, in the Census Office, not yet published, it appears that there are in these eleven States 405,043 farmers or landholders, as distinguished from freeholders. This gives sixty-seven acres and a fraction as the average number of acres of improved land held by each farmer or landholder in these eleven States, and also shows that about one thirteenth (thirteen and a fraction) of the total population of these States are farmers.

Now, say that *one thirteenth* of the 2,307,049 increase of population for the ten years prior to 1850 were farmers, and you have 177,465 as the *increased number* of farmers or settlers for the ten years prior to 1850. By giving sixty-seven acres of unimproved land to each of these settlers, you have 11,890,155 as the number of acres actually settled for the ten years prior to 1850. Now, allow the same ratio of *decennial* increase, say seventy per cent., and take one thirteenth of that increase for settlers, and the whole increase of the population of these eleven land States for thirty-four years will not give settlers sufficient to settle the 137,936,551 acres of unimproved land in the same States which had been sold or granted by the Government, or located under the different "bounty land acts," on the 30th of September, 1851. But I submit, Mr. Chairman, that it is not probable that the ratio of decennial increase, for the next twenty or thirty years, of the population in these States, in consequence of the probable immigration from the old States, and even from the land States, to California, Oregon, Texas, and the recently-acquired Territories, will be as large as for the last ten years; indeed, that it is not probable that such ratio of decennial increase will hereafter exceed on an average the ratio of decennial increase of the free white population of the whole of the United States for the last ten years, viz: thirty-eight per cent. Should it not, it will take the whole increase of the population of these eleven land States for about fifty years to settle the 137,936,551 acres of unimproved lands in those States which have been so disposed of by the Government.

Now, does not this statement alter the question? This whole land question has been argued this session, by the friends of the "homestead bill," and of these indiscriminate grants of the public

lands for various purposes, as if the Government was *locking up the land* from settlement and cultivation, as if the Government was depriving persons of a natural right to sufficient land to settle on; as if all the Government had to do was to say the word, and settlers would spring up by millions in a night, like mushrooms.

What glowing pictures have we had drawn of the beneficent effects, to flow from this bill upon the country, and upon humanity! "One hundred and sixty millions of acres of wild land, settled, improved, and cultivated, as the result of a policy shadowed forth and guarantied by the passage of this bill," says my friend from Pennsylvania, [Mr. Dawson], "producing a surplus of 480,000,000 of bushels of wheat, which, at fifty cents per bushel, would amount to \$240,000,000," he enthusiastically exclaims; as if we had *now* a million of "heads of families," ready, and waiting, and willing to take *immediate* possession under this bill, without calling them from *other employments, or affecting other interests*—overlooking the fact, that the public lands had already been thrown into the market immensely in advance of the demand from increase of population; and overlooking the great and serious injuries, which must necessarily follow, even to the land States, from the "homestead bill," when taken in connection with the other enormous grants of the public lands. Instead of attributing the evil of which the new States complain, of large tracts of their land being held by speculators to the right cause, viz: to the questionable policy of the Government, to say the least, in surveying and offering for sale the lands, vastly in advance of the requirements of settlement, the advocates of this measure charge the Government with *withholding* and monopolizing the lands; and now bring forward this "homestead bill," and other land bills, to take unnumbered millions of acres more from the hands and control of the Government. Pass the "homestead bill," and where will not only the unimproved lands to be granted by the other land bills of this session, but those which have heretofore been disposed of by the Government, go? Most inevitably, the greatest portion of them into the hands of speculators, or into the hands of the States in which they lie;—if into the hands of those States, they will thus acquire from the Government, as a gift, *indirectly*, that which they had no right to ask, or the Government constitutionally a right to grant as a gift, directly.

II. This "homestead bill" is unjust, and will be injurious to the old States, or States in which there are no public lands, and to the capital invested in unimproved land, railroads, agriculture, and manufactures in those States.

By taking the total of acres of improved land in all the States in which there are no public lands, except Texas, and in Ohio, (which has only about 200,000 acres of public land, and therefore in looking at this question, ought not to be called a land State,) as shown by the last census, from the total of the areas in acres of these States, it appears that there are 220,708,176 acres of unimproved land in these States.

By a recent statement published by Mr. Kennedy, of the Census Office, it appears that there was, on the 1st of January, 1852, in operation, and in course of construction, 21,712 miles of railroad in the United States. That of these 21,712



miles of railroad, 5,264 miles are in Texas, and in the land States exclusive of Ohio, and 16,448 miles in Ohio, and in the States in which there are no public land exclusive of Texas; that the cost of these railroads per mile was, in New England, about \$45,000; in New York, Pennsylvania, and Maryland about \$40,000; and in the other States it is estimated at \$20,000. Call the cost of this 16,448 miles of railroad \$30,000 per mile, and you have \$493,440,000 as the cost of the railroads now in operation and in course of construction in the States in which there are no public lands, exclusive of Texas, and in Ohio.

The capital invested in agriculture in these States is immense. The capital employed in agriculture in the States of New York, Pennsylvania, Ohio, and Virginia alone, amounting to \$1,070,549,344, as is shown by the last census, estimating the improved land in these four States at \$20 per acre.

By the last census, it appears that the capital invested in the manufacture of cotton goods, woolen goods, pig iron, wrought iron, and castings alone, in the United States, amounts to \$151,877,687.

Now, does it require any reasoning to show that this "homestead bill" will be injurious to these States which have no public lands, and to the immense capital invested in unimproved lands, railroads, agriculture, and manufactures therein? What is the wealth of a State but its productive labor? and what is this bill but a *bonus*, a *bounty offered by the Government for labor to leave the old States and settle in the new States*? How can it benefit the land States unless it induces additional emigration from the old States to them—an emigration greater than would take place under the "preemption rights and minimum price," of the old land system? Neither this "homestead bill," nor any other land measure of this session, can benefit the land States as a whole, by taking the population of one land State and transferring it to another; nor can they benefit any one land State by taking the population from one part of that State and transferring it to another part of the same State. The benefit which the land States expect to receive, and which they claim from these measures is, that they will cause persons, or a class of persons, to leave the old States and settle in the land States who would not otherwise do so.

The population of these land States, taking *all of them, slave and free*, has increased seventy per cent. in ten years. The population of *several of the free land States* has increased in the same period from three hundred to eight hundred per cent.—a growth and prosperity unexampled in the history of States. During the same period the population of the New England States increased only twenty-two per cent., and the population of the Middle States about twenty-nine per cent. Now, what has caused this most extraordinary growth and rapid increase of the population of the land States but the rich and alluvial soil given to them by Nature, and the "preemption rights and minimum price" of the present land system given to them by the Government? From whence came a great part of this increase of population—at whose expense have the land States gained this extraordinary increase? From the old States, and at their expense. But of this I do not complain. I rejoice at their prosperity and growth. I look at it with pride and pleasure. The advantages which Nature has given to them they are justly entitled

to; and of the present land system, which has looked so favorably to their settlement and growth, I do not complain, for it has *also looked to revenue for the benefit of all the States*. But this "homestead bill," while it is a *bold bid* by the Government for population to leave the old States and settle in the new States—a gift of one hundred and sixty acres of land to the citizen of the old State, *on the condition* that he shall leave the old States and settle on the one hundred and sixty acres in the new States—is at the same time utterly inconsistent with any idea of looking hereafter to the public lands as a source of revenue; and thus will not only *retard the growth*, but indirectly *increase the taxes* of the old States for the benefit of the new States.

Will not the labor, the settlers that this bill, this *bonus* of the Government, induces to leave the old States and go to the new, add to the wealth and prosperity of the new States? And, if so, why will not such labor and settlers be a *loss* to the old States? Do the land States claim that they are to receive any benefit or advantage from this bill, that is not to be gained from, and to be the loss of, the States in which there are no public lands?

If these old States had a surplus of population; if all the lands in them, susceptible of profitable and successful cultivation, had been settled and improved; the question would be a very different one. But look at these States: Of the 22,400,000 acres in Maine, 2,019,593 only are improved; of the 5,139,000 acres in New Hampshire, 2,251,388; of the 29,444,000 acres in New York, 12,285,077; of the 4,384,640 acres in New Jersey, 1,770,337; of the 30,080,000 acres in Pennsylvania, 8,619,631; of the 25,576,960 acres in Ohio, 9,730,650; of the 304,685,880, the total of acres in Ohio, and in all the States in which there are no public lands, exclusive of Texas, 83,977,704 acres, a little over one quarter only are improved. A large portion of this unimproved land is not susceptible of cultivation no doubt; but a large portion of it, probably the greater portion, is susceptible of successful and profitable cultivation; and though it may not be so rich and productive, lies *nearer market* than the land in the land States. It is mostly owned and held by citizens of the different States, and is waiting for sale, settlement, and cultivation. Would not its settlement and cultivation add immensely to the wealth and power of the States in which it lies? What is wanting for its sale, settlement, and cultivation, but settlers? but when are these States to have settlers to settle it, under the policy of the Government, "shadowed forth" by this "homestead bill;" by which the Government, (as if the advantages of soil and climate, and of "preemption rights and minimum price," by which the land States have nearly doubled their population in ten years were not enough,) *throws itself* into the scale, by furnishing land, capital, free-gratis, to those who shall leave the old States and settle in the new?

The land States not only ask for the "homestead bill," to enable them to increase their population faster; but they also ask for unnumbered millions of acres of the public domain as a gift or bonus with which to build railroads, for the same purpose.

Now look at the old States, with their 16,448 miles of railroad, and \$493,440,000 of the capital

of their citizens invested therein. What were these railroads built for? Was not one of the principal objects in building most of them, to open to market the unimproved land in these States, and thus to hasten its sale, settlement, and cultivation; and is not the loss or profit of this immense capital, invested in these railroads, dependent more or less upon the settlement, improvement, and cultivation of the unimproved land in these States?

Look at the capital invested in agriculture in the improved land and its cultivation, and in manufactures, in the old States. Is it not all dependent upon the price of labor for its profit or loss; and is not this homestead bill, in substance and in effect, a premium offered by the Government to the laborer, for the benefit of the laborer, and of the land States, to leave the farmer and manufacturer in the East and go West? And is it just for the Government thus to use the property of *all* the States, or of *all* their citizens, for the benefit of a *few* States, or of a *particular class* of citizens, to the injury of the remainder of the States, and of another class of citizens?

Mr. Chairman, I must not be misunderstood. As a resident of New York, I do not complain of or envy the prosperity of the West. I do not object to the people of the East going and settling there by thousands or hundreds of thousands at a time, if they choose. I am not the advocate of *low wages*, or of a protective policy. I do not object to the wages of labor, however high, which may be the result of the general prosperity of the country, of general causes, of laws, or measures of the Government, *general or equal* in their operation. Nor, perhaps, could the capitalist complain of a law, or measure of the Government, though partial in its operation, and intended to benefit only particular States, or a class of citizens, if he had invested his capital *after* such partial law or measure of the Government. But I say, and this is my point, that Congress has no right, and it would be unjust, to pass a law like this "homestead bill," partial and unequal in its operation, for the exclusive benefit of a few of the States, or of a particular class of citizens, and to the injury of other States, and of another class of citizens who had invested their capital under a different policy of the Government, *even though* such law may have the effect to raise the wages of labor. I object to the Government's taking the public land, or money from the public Treasury, the property of all, and giving it to the poor and landless as a charity for their benefit exclusively, because they are poor and landless; or giving it to the poor and landless on condition that they settle in certain States, for the benefit of those States exclusively; and more especially, as I have shown, that such charity to individuals, or partiality to States, must operate to the injury of other States, and of other individuals, equally entitled to the favorable regard of the Government. I object to the Government *interfering in this way*; and by means of this *bounty of land* offered to the landless, inducing labor to leave the old States for the benefit of the new States, and to the injury of the old States.

III. This "homestead bill" is inconsistent with the past, and proposed grants of the public lands for railroads:

1st. Because it will necessarily prevent the grantees of these railroad lands, selling them to actual settlers within the period required by the

railroad bills; and if not sold to actual settlers, the lands will pass in large tracts into the hands of speculators and mortgagees, and will be held by them unimproved for high prices, which, if paid in time, will be paid by the settler for the *benefit of the speculator or mortgagee, who, after all, will be the only one benefited.*

2d. Because the only plausible ground on which these railroad grants can be said to be either constitutional or expedient, is, that the railroads will enhance the value of the remainder of the public domain, and will thus benefit the United States as a landholder. Now, admit this to be so—for whose benefit is this enhanced value? Is it not for the benefit of the settlers under the "homestead bill?" Does not the "homestead bill" give away to actual settlers the lands so enhanced in value by the railroad bills? You first increase the value of the lands by the railroad bill, and then turn around and give them away by the "homestead bill," and allege this increased value as a justification for the railroad bill. The justification is this, and nothing more or less; that by the means of the one gift by the railroad bill, you enhance the value of the other gift or charity by the "homestead bill"—and all the benefit I can see that the Government can receive from the one measure, is the satisfaction of having increased the value of its charity to the landless by the other.

The "homestead bill" is inconsistent with itself, if I may so speak. It grants the land to the actual settler, on condition that he occupy and cultivate it for five years. For *whose benefit* is this condition? It is either for the benefit of the settler, or of the State, or of the United States. You dare not say that it is for the benefit of the settler, for then you treat the measure *openly* as a public charity. You dare not say it is for the benefit of the State, for then you meet with an acknowledged constitutional difficulty. But you say that the settlement and cultivation which is enforced by the condition, will increase the value of the public lands belonging to the United States, which may not be settled and cultivated under the act, and, therefore, the United States will be benefited as a *landholder*, and this is the only ground upon which you put the *constitutionality* of the act.

Now, suppose this increase in value to take place, for whose benefit is it? If not for the benefit of the first settlers, who may choose thereafter to avail themselves of the benefit of the act. A, B, and C settle on three adjoining quarter sections, and cultivate them severally for five years, and thereby increase the value of the adjoining unimproved quarter sections belonging to the United States; will C, D, and E, settlers bound West, who want land for actual settlement and cultivation, *purchase* of the Government these quarter sections, so enhanced in value by the settlement and labor of A, B, and C on the adjoining quarter sections, and *pay the enhanced price* for them to the Government, when they can take them *freely* under the homestead bill as a *gift*? The operation of the bill is not limited to any certain period; it is forever, or as long as there are any public lands remaining to be settled or disposed of; and this *increased value* produced by the settlement and cultivation of the *first settlers* under the bill, is for the benefit of the *subsequent settlers* under the bill, and not for the benefit of the United States as a landholder.

IV. This "homestead bill" is wholly inconsistent—



ent with the *policy* and *object* with which the different "bounty land acts" have been passed.

What was the object of those acts? What were the lands distributed by these acts, given for? As bounties, as *rewards for public services*; for services which had been rendered by soldiers for the *whole country*. What was the *policy* of those acts? To encourage the citizen to answer promptly his country's call upon him, to redress her wrongs; to defend her liberties; to fight her battles; by showing him that if he survived those battles, the Government would well reward him; and if he did not, that it would take care of his *wife and children*. If this was not the policy, then those acts were not justifiable.

Now, this "homestead bill" not only gives the same or a greater quantity of land to the poor man, because *he is poor*, that the "bounty land act" gives to the old soldier because *he had been brave*, and thus puts *poverty and bravery* on a par for the future enlightened favors and kind regard of the Government; but by it the Government wholly, or partially, takes away from the old soldier even the bounty which it has bestowed by the bounty land act. This bill will make his land warrant valueless or nearly so. He "asked for bread," and we gave it to him, with many fine speeches and compliments, for his bravery and patriotism; and now, within a brief period, by this bill, we "turn his bread into stone," and put him upon a par with the "*squalid and the suffering*," whom my friend from Pennsylvania, [Mr. CHANDLER,] in his speech, so classically, beautifully, and humanely expresses his desire to see taken by it "from the crowded, unhealthy alleys of our cities."

V. It is evident, from what has been said, that this measure is inconsistent with an increase of the present tariff, either for revenue or for protection; for how can you call such increase, a tariff for revenue, when with one hand you *give away the revenue*, and with the other increase the tariff to supply the deficiency; and how can you call such increase, a tariff for protection, when by this homestead bill you *produce or increase* the very cause for which you grant the protection, and for which it is asked?

What is the difficulty with manufactures now? Why does even the manufacturer of iron ask for further protection? Is it a want of a market for his iron, as the gentleman from Massachusetts [Mr. RANTOUL] would seem to suppose? Protect iron to any extent, and we will not be able, in years, to manufacture all the country will want.

No; it is the *cost of manufacturing* it here that calls for the protection. And why the cost here? It is not the cost of the raw material—of the ore, or of the coal. It is, then, the cost of the labor—the high price of labor here. Take the manufacture of pig iron in the United States. The capital invested is \$17,346,425; the value of the raw material—ore, fuel, &c.—\$7,005,289; the amount of wages paid for a year, \$5,066,628; value of entire products, \$12,748,777.

I am not advocating now, either protection and low wages, or free trade and high wages; but my point is, that this homestead bill will take labor from the manufacturing States to the land States—from the manufactories of the East to the farms of the West—and thereby increase the cost of labor and the cost of manufacturing; and that, therefore, it is inconsistent for gentlemen here, rep-

resenting a manufacturing interest, (the iron interest of Pennsylvania, for instance,) to advocate and press this measure, and *afterwards* come forward and ask for an increase of the duty on foreign iron, to protect the iron interest of Pennsylvania. To be consistent they must *begin now*, and protect that interest by voting against this bill.

VI. Mr. Chairman, the principle upon which this bill proceeds, as a measure of public policy, or of political economy, is so evidently novel and extraordinary—so utterly opposed to, and destructive of, the true principle upon which labor should be encouraged and protected by the Government, as shown by all human experience, that I have not thought till now of stating this, as a distinct objection to the bill.

All human experience, from the days of Adam to this day, has shown that the true way for a Government to encourage industry and reward labor, is to protect property; so that while its acquisition shall be the stimulus to labor, its security shall be the reward of labor. The great principle is to make the acquisition of property desirable, and thus induce to industry. To do this, protect it by equal and just laws; free it from unnecessary restrictions; give the holder of it the right freely to dispose of it, by will or otherwise; give it to his nearest of kin on his death, if he has not disposed of it while living, and thus bring in the force of the affections and the ties of blood to the aid of industry. In this way the reward of the laborer will be according to his merit, because he will have and enjoy all he has earned and saved.

But this bill proceeds upon an entirely novel principle—to encourage industry by a distribution of bounties; not for services done, nor according to merit, for it gives as much land to the man who has spent in idleness and dissipation all of his patrimony but \$400, as to the man who, by hard labor and economy, has saved \$400.

The principle upon which it proceeds would appear to be as little in accordance with the principles of divine justice as of political economy. Look at the parable of the talents in the 25th chapter of Matthew, and of the parable of the pounds in the 19th chapter of St. Luke. In the former, which of the servants did the "man traveling into a far country" reward on his return—the man who had hid his *talent* in the earth, or the servant who had made other five talents? In the latter parable, did the "nobleman" reward the servant who had tied his pound in a napkin, or the servant who had made other ten pounds?

Even *indiscriminate* private charities are thought by some to do more hurt than good by encouraging idleness; but what shall we say of this great public charity, by which the Government offers a bonus to idleness, by giving the same bounty to the idle and vicious spendthrift, as to the industrious and thrifty laborer?

I am as much the friend of the laborer, as the gentlemen on the other side of this question. We differ in the way of showing our friendship, in the way of benefiting him. I would do it by encouraging his industry, protecting his person and property, and by giving him all possible liberty, both of person and property, consistent with a well-organized, efficient civil government, and the rights of others; they (if I am correct in my view of this bill) would do it by taking the property of all, and giving it to the few—they would do it by



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giving the same reward to the vicious and idle poor man, as to the honest and industrious laborer, and thus put honest labor and vicious poverty on a par.

I think this bill is an attack on the rights of property, for I can see no difference in principle, in taking the property of A B and giving it to C D, because he has none; and taking the property of all the people of the United States, and giving it

to those only who have no land. I look upon this bill as *agrarian*, and if it should become a law, as the *first* only of measures brought forward to more nearly equalize the distribution of property.

I say the honest and industrious laborer will be injured by any departure from that great principle, the *security* and *freedom* of the rights of property, and therefore I am his friend by defending it.

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